TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES.

No. ~~357~~ 128

THE IOWA HOMESTEAD COMPANY, APPELLANTS,

vs.

THE DES MOINES NAVIGATION AND RAILROAD COMPANY, SAMUEL G. WOLCOTT, ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF IOWA.

FILED OCTOBER 26, 1871.

SUPREME COURT OF THE UNITED STATES.

No. 357.

THE IOWA HOMESTEAD COMPANY, APPELLANTS,

vs.

THE DES MOINES NAVIGATION AND RAILROAD COMPANY, SAMUEL G. WOLCOTT, ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF IOWA.

INDEX.

	Original.	Print.
Transcript from district court	1	1
Injunction	1	1
Notice	4	2
List of lands	11	4
Bond	14	5
Order transferring case to circuit court	19	6
Affidavit of J. Browne	23	7
Bond	25	8
Petition for removal	27	9
Subpœna	30	9
Petition	32	10
Certificates of governor of Iowa of completion of railroad	50	20
Dubuque & Sioux City Railroad land list	53	22
Deed. Dubuque & Sioux City Railroad Company to Forest and others	60	26
List of lands deeded to Iowa Homestead Company by Dubuque & Sioux City Railroad Company	66	31
List of lands within five miles of Des Moines River not included in deed from State of Iowa to Des Moines Railroad Company May 3, 1851, on west side of river	68	32
Letter Jos. S. Wilson, Commissioner of General Land Office, to E. C. Litchfield, of June 29, 1867	69	32
William T. Steiger to Platt Smith, July 2, 1867	70	33
Jos. S. Wilson, Commissioner General Land Office, to William T. Steiger, of December 4, 1866	71	34
governor of Iowa to J. M. Edmunds, Commissioner General Land Office, of July 26, 1866	71	34

	Original.	Print.
Report of J. A. Harvey, register State land office, to census board of adjustment of Des Moines River grant, May 23, 1866	72	34
Deed. Forrest & Barney, trustees, to Iowa Homestead Company, (Webster County)	76	37
Deed. Forrest & Barney, trustees, to Iowa Homestead Company, (Humboldt County)	80	40
Deed. Forrest & Barney, trustees, to Iowa Homestead Company, (Hamilton County)	83	42
Act of Congress of 8th of August, 1846	85	43
Letter R. M. Young, Commissioner General Land Office, to Charles Corkery, secretary board of public works, Iowa, February 23, 1848	87	44
Charles Corkery, secretary board of public works, Iowa, to R. M. Young, Commissioner General Land Office, 18th September, 1848	88	45
Charles Corkery, secretary board of public works, to C. Neely, register, 18th September, 1848	89	46
Senators and Representatives of Iowa to R. J. Walker, Secretary of the Treasury, January 8, 1849	90	46
R. J. Walker, reply to above, March 2, 1849	92	48
R. J. Walker to R. M. Young, Commissioner, March 2, 1849	93	48
R. M. Young, Commissioner General Land Office, to register and receiver, Iowa City, January 1, 1849	93	48
J. Butterfield, Commissioner General Land Office, to J. Williams, December 18, 1848	94	49
T. Ewing, Secretary of the Interior, to Commissioner General Land Office, April 6, 1850	95	49
A. H. H. Stuart, Secretary of the Interior, to Commissioner General Land Office, April 29th, 1851	96	50
Statement of A. H. H. Stuart, annexed to lists Nos. 1, 2, and 3, October 30, 1851	97	51
Approval of R. McClelland, Secretary of the Interior, December 17, 1853	98	52
Letter. A. H. H. Stuart, Secretary of the Interior, to Commissioner General Land Office, August 23, 1852	99	52
Letter. John Wilson, Commissioner General Land Office, to Thomas H. Benton, junior, January 6, 1834	99	52
Opinion of C. Cushing, Attorney General, of 29th May, 1856	100	53
Letter. R. McClelland, Secretary of the Interior, to Commissioner General Land Office, June 9, 1856	110	59
Act of Iowa legislature, March 23, 1858	111	60
Letter. Charles Mason agent and attorney of Iowa, to Jacob Thompson, Secretary of the Interior, April 30, 1858	112	60
Letter. Reply to above	113	61
Appeal from Secretary of the Interior, May 10, 1858	113	61
Opinion of Attorney General J. S. Black, November 22, 1850	126	69
Notice respecting certain lands in the State of Iowa, Jos. S. Wilson, Commissioner General Land Office, May 18, 1860	130	71
Letter J. Thompson, Secretary of the Interior, to Commissioner General Land Office, September 6, 1860	131	72
J. Thompson, Secretary of the Interior, to G. W. Jones, November 3, 1860	132	72
Caleb B. Smith, Secretary of the Interior, to Commissioner General Land Office, April 18, 1862	133	73
J. M. Edmunds, Commissioner General Land Office, to J. W. Grimes, April 18, 1862	134	74
governor of Iowa to J. M. Edmunds, May 6, 1862	135	74

	Original.	Print.
Letter J. M. Edmunds, Commissioner General Land Office, to governor of Iowa, June 26, 1862	136	74
Thomas Hendricks, Commissioner General Land Office, to register and receiver Des Moines, Iowa, May 15, 1856	137	76
Thomas Hendricks, Commissioner General Land Office, to land office at Fort Dodge and Des Moines, January 19, 1856	138	76
Notice No 59, for restoration of certain lands to market in Iowa	139	77
Letter. Hendricks, Commissioner General Land Office, to six land offices in Iowa, January 28, 1857	139	77
Incorporation of Dubuque & Sioux City Railroad Company	140	77
Letter. Commissioner General Land Office to secretary of state of Iowa, Aug. 20, 1856	140	78
Certificate of location of Dubuque & Sioux City Railroad, September 27, 1856	142	79
Commissioner General Land Office to agent of State of Iowa and railroad, March 3, 1857	143	79
Certificate of Commissioner General Land Office of lands within six-mile limits, December 23, 1858	144	80
Certificate of Commissioner General Land Office of lands within fifteen-mile limits, December 23, 1868	145	81
Joint resolution containing propositions for a settlement with the Des Moines Navigation and Railroad Company	147	82
Deed. State of Iowa to Des Moines Navigation and Railroad Company, May 3, 1858	150	84
Deed. State of Iowa to Des Moines Navigation and Railroad Company, May 18, 1858	151	84
Act of March 22, 1858. Grant to Keokuk, Fort Des Moines and Minnesota Railroad Company	153	86
Resolution of Congress, March 3, 1861, to quiet titles in State of Iowa	156	88
Grant of lands to State of Iowa to aid in construction of railroads in said State, May 15, 1856	158	89
Act of State of Iowa accepting above	160	90
Act to require Dubuque & Sioux City Railroad to release certain swamp, school, and river lands	166	93
Table No. 2, showing lands certified under Des Moines grant, sold to individuals, patented to Des Moines Navigation and Railroad Company, and certified as railroad lands	168	95
Table No. 3, showing lands certified under Des Moines grant, sold by State to individuals, patented to Navigation Company, and certified as railroad lands	175	101
Table No. 4, showing lands certified under Des Moines grant, sold by State to individuals, patented to Navigation Company, and certified as railroad lands	184	109
Table No. 5, showing lands approved to State under Des Moines grant, sold by John Tolman as school lands, patented to Des Moines Navigation and Railroad Company, and contract cancelled	187	111
An act providing for adjustment of land claims with General Government	189	113
Settlement of census board and tables A, B, C, and D, of Iowa	192	118
Statement "B," showing the whole area of grant to State of Iowa, under act of 12th of July, 1862, and amount sold and otherwise disposed of by United Stater prior to passage of said act, and also area contained in old "river lots and vacant lands within the limits of said grant, above the mouth of the Raccoon Fork of Des Moines River	211	120
Statement showing the extent of the railroad interference with Des Moines River grant	215	137

	Original.	Print.
Mortgage or deed of trust. Des Moines Valley Railroad Company to W. Gilman and N. A. Cowdrey, trustees	224	142
List of actions commenced by grantees of Des Moines Navigation and Railroad Company vs. grantees Dubuque & Sioux City Railroad Company, and squatters	244	154
Suits in equity in State courts	246	155
Litchfield vs. Crouse, petition	248	155
Act prescribing the terms and conditions upon which the State will relinquish to Des Moines Valley Railroad Company certain rights and privileges in respect to resumption of lands heretofore granted to said company	250	156
Commissioner General Land Office to governor of Iowa, October 17, 1846	255	159
Joseph S. Wilson, Commissioner, to J. Thompson, Secretary of the Interior, June 7, 1860	257	160
William T. Steiger, agent, &c., to Joseph S. Wilson, June 1, 1860	258	160
Charles Mason to Joseph S. Wilson. Argument for purchasers of Des Moines River lands	258	161
William T. Steiger to Joseph S. Wilson, Commissioner General Land Office	264	165
J. Thompson, Secretary, to R. W. Johnson, chairman Committee on Public Lands, United States Senate	265	165
Joint resolution in relation to the Des Moines River grant, April 7, 1862	268	168
Exhibit No. 16	270	168
Letter of W. C. Johnson to Governor J. W. Grimes	270	168
Letter of E. H. Tracy to president Des Moines Company	280	171
Opinion of Attorney General and order of Secretary of the Interior	286	172
Contracts of the Des Moines Navigation and Railroad Company	327	184
Table of lands	331	185
An act providing for the adjustment of certain land claims	361	200
Articles of incorporation of the Iowa Homestead Company	367	202
Map	377	205
Copies of certificates under which lands in controversy are claimed by the grantors of the Iowa Homestead Company	377*a*	205
Amendment to bill	378	207
Deposition of A. Brown	393	212
O. H. Booth	457	235
J. A. Harvey	488	245
Answer of R. S. Burrows	500	249
A. H. Tracy	507	251
The Des Moines Navigation Company et al	556	267
The Des Moines Valley Railroad Company	561	269
Amended answer of The Des Moines Valley Railroad Company	587	277
Answer of W. B. Wells	589	278
Replication	638	294
Stipulation	639	294
Agreement	641	294
Stipulation	643	295
Stipulation	650	297
Certificate and agreement	653	298
Order of court	655	299
Stipulation	655	299

DEFENDANTS' EVIDENCE.

An act granting certain lands to aid the improvement of the navigation of the Des Moines River	663	302
Joint resolution accepting grant	664	302
Act creating board of public works	667	303

	Original.	Print.
Letter Acting Commissioner Piper to Governor Clark	683	307
Acting Commissioner Piper to register and receiver at Iowa City	684	308
Williams & Bonney to Governor Clark	685	309
Williams, Commissioner, to register and receiver	686	309
Commissioner Young to Corkery, secretary	687	309
Corkery to Young, reference to	688	310
Corkery to Neely, reference to	688	310
Dodge to Leffler, reference to	688	310
Reply of Secretary Walker, reference to	688	310
Secretary Walker to Commissioner Young	689	310
Commissioner Young to register and receiver	690	311
Bowen & Morris to Commissioner Young	691	311
Bowen to Commissioner General Land Office	691½	311
Butterfield, Commissioner, to Williams, reference to	692	312
Report. Secretary of the Interior to resolution of the Senate	692	312
Commissioner General Land Office to Secretary of the Interior	698	313
Secretary of the Interior to Commissioner General Land Office	702	315
Jones, Dodge, and others to the President	704	315
Opinion of Attorney General Johnson	707	316
Butterfield, Commissioner, to the President	716	319
Do. do.	717	320
Jones, Dodge, and others to Secretary Stuart	725	323
Board of public works to Butterfield, Commissioner	734	326
Letter Commissioner Butterfield to Secretary Stewart	735	327
Secretary Stuart to Commissioner General Land Office	737	327
Secretary Stuart to Commissioner General Land Office, reference to	738	328
Do. do	738	328
Commissioner Butterfield to Van Antwerp	739	328
Caption of a list of lands approved to the State of Iowa by Secretary Stuart	740	329
Commissioner Butterfield to Gillaspy, register	741	329
Secretary Stuart to Acting Commissioner General Land Office	743	330
Acting Commissioner Frailey to Gillaspy	753	333
Commissioner Wilson to Gillaspy	754	333
Benton, reference to	755	334
Gillaspy	755	334
Telegram. Hendricks, Commissioner, to register and receiver	756	335
Commissioner Hendricks to Hon. G. W. Jones	756	335
Commissioner Hendricks to register and receiver	758	336
Report. Chairman Committee on Public Lands, House of Representatives	759	336
Articles of incorporation of the Des Moines Navigation and Railroad Company	760	337
Contract between State of Iowa and the Des Moines Navigation and Railroad Company	762	339
Secretary McClelland to Commissioner Hendricks, reference	768	347
Hon. Reverdy Johnson to Secretary McClelland	768	347
Secretary McClelland to Reverdy Johnson	769	347
Commissioner Hendricks to Henn, agent, &c	770	348
Joint resolution legislatature of Iowa, containing propositions for settlement, reference to	771	349
Act disposing of grant of land to Territory of Iowa, reference to	771	349
Act appointing commission, reference to	771	349
Acceptance of settlement proposed by joint resolution, &c	772	349
Certificate of Governor Lowe to the President	774	352
Section 1202 of code of 1851	775	353
Mason to Secretary Thompson, reference to	776	353

	Original.	Print.
Secretary Thompson to Mason, reference to	776	353
Mason to the President, reference to	776	353
Deeds of State of Iowa to Des Moines Railroad Company, reference to	776	353
Opinion of Attorney General Black, reference to	777	353
Commissioner Hendricks to Jones, reference to	777	353
Secretary Thompson to Commissioner General Land Office	778	353
Chapter 16, special acts of general assembly of Iowa, 1860	779	354
Chapter 63, special laws of Iowa, 1860	790	357
Decision of Supreme Court of the United States in Dubuque and Pacific Railroad Company vs. Litchfield, reference to	791	359
Notice containing reservation of the lands from sale	791	359
Steiger, agent, to Commissioner Wilson	792	359
Commissioner Wilson to Steiger	793	360
Secretary Thompson	794	360
Secretary Thompson	796	361
Secretary Thompson to Commissioner General Land Office	797	361
Proclamation for the sale of lands, August 14, 1860	798	361
Commissioner Wilson to Secretary Thompson	813	366
Secretary Thompson to Commissioner General Land Office	814	367
Senator Jones	814	367
Governor Kirkwood	815	368
Joint resolution to quiet title to lands in State of Iowa	816	368
Secretary Smith to Commissioner General Land Office, reference to	816	368
Commissioner Edmunds to Senator Grimes, reference to	816	369
Governor Kirkwood to Commissioner Edmunds, reference to	817	369
Commissioner Edmunds to Governor Kirkwood, reference to	817	369
Act confirming a land claim to State of Iowa	817	369
Joint resolution accepting grant	818	369
Act providing for selecting lands	819	370
Commissioner Edmunds to Governor Kirkwood	821	370
List of lands certified by Governor Kirkwood	822	371
Act of the general assembly of State of Iowa supplementary to the legislation of 1858	824	372
Commissioner Edmunds to Secretary Usher	833	380
Assistant Secretary Otto to Commissioner General Land Office	835	382
Record in Wolcott vs. Des Moines Navigation and Railroad Company	836	382
Record in Burr vs. Des Moines Navigation and Railroad Company	875	415
Docket entries and extracts from minutes Supreme Court of the United States in case of Wolcott vs. Des Moines Navigation and Railroad Company	913	438
Docket entries and extracts from minutes Supreme Court of the United States in Des Moines Navigation and Railroad Company vs. Calvin Burr	924	442
Argument of Platt Smith	934	446
Argument of Trumbull and Cook	948	450
Supplemental act of general assembly of the State of Iowa, March 12, 1866	962	455
Decision of Supreme Court of the United States in Wolcott vs. Des Moines Company, reference to	967	457
Secretary Browning to Commissioner General Land Office	967	457
Do do.	967	457
Act of assembly of Iowa granting lands to Des Moines Valley Railroad Company	968	458
Table of lands	971	461
Secretary Browning to Commissioner General Land Office	998	478
Commissioner Wilson to Secretary Cox	999	479
Decision of Supreme Court of the United States in Riley vs. Welles	1004	481
Deposition of J. A. Harvey	1005	481

	Original.	Print.
Act of Congress confirming the Harvey-Wilson settlement	1008	484
Stipulation and certificate as to date of survey	1010	484
Stipulation between the parties	1012	485
Decree	1023	488
Appeal	1024	488
Bond	1025	488
Clerk's certificate	1027	489
Agreement	1028	489

1 Pleas in the circuit court of the United States for the district of Iowa, at a term thereof, and holden at the United States court-house, in the city of Des Moines, in said district of Iowa, on the second Tuesday, the ninth day, of May, in the year of our Lord one thousand eight hundred and seventy-one, before Honorable Samuel F. Miller, justice of the Supreme Court of the United States, and Honorable John F. Dillon, judge of the United States circuit court for the eighth circuit.

2 Be it remembered that, heretofore, to wit, on the 17th day of March, 1869, comes Edwin C. Litchfield, Electus B. Litchfield, and John Stryker, citizens of the State of New York, defendants in a certain cause wherein The Iowa Homestead Company is plaintiff, and files in the clerk's office of the United States circuit court for the district of Iowa, a transcript from the district court of Webster County, in the State of Iowa, which said transcript is in words and figures following, to wit:

The State of Iowa to The Des Moines Navigation & Railroad Company, Sam. G. Wolcott, W'm B. Wells, Russell Burrows, Edwin C. Litchfield, W'm J. McAlpine, Richard B. Chapman, Albert H. Tracy, Harriett Tracy, Electus B. Litchfield, Edward Wade, John Stryker, The Des Moines Valley Railroad Company, Thomas Cotter, Jacob Crouse. John McDermot, & Francis Tracy:

Whereas The Iowa Homestead Company has filed in our district court for the county of Webster, a petition, claiming that the said homestead company, a corporation created by the laws of Iowa, has the legal title to the lands, a copy of which is hereto annexed; and that you or
3 some of you have brought, and intend to bring, certain actions in law against persons in possession of said lands to divert the title of the said Iowa Homestead Company, and that you, or some of you, are about to prove up and claim pre-emption on some of the lands which are named in the list hereto attached, & has prayed in said bill to quiet their title to said lands:

Now, these are to command you, and each of you, your agents, attorneys, and servants, that you do wholly refrain from prosecuting said actions at law, or either of them; and that you wholly refrain from further applying for proving up pre-emption on any of said lands until the further order of our said district court for the county of Webster. And you will disobey this writ at your peril.

Witness, in testimony, I, Wilson Lumpkins, clerk of the district court, have hereto subscribed my name and affixed the seal of said court at my office in Fort Dodge, this the sixth day of October, A. D. 1868.

[SEAL.] W. LUMPKINS, *Clerk.*

4 DES MOINES, IOWA, 10*th October*, 1868.

Accepted service of the within writ for the defendants The Des Moines Navigation & Railroad Company, Edwin C. Litchfield, and Electus B. Litchfield.

J. BROWN,
Agent of said Defendants.

Original notice.

In the district court.

STATE OF IOWA, *Webster County, ss:*

THE IOWA HOMESTEAD COMPANY
vs.
THE DES MOINES NAVIGATION & RAILROAD Company & others.

To The Des Moines Navigation and Railroad Company, Samuel G. Wolcott, W'm B. Wells, Russell Burrows, Edwin C. Litchfield, William J. McAlpine, Richard B. Chapman, Albert H. Francis, Harriett Tracy, Electus B. Litchfield, Edward Wade, John Stryker, The Des Moines Valley Railroad Company, Thomas Cotter, Jacob Crouse, and John C. McDermott, Albert H. Tracy, and Francis W. Tracy, def'ts:

You are hereby notified that, on or before the petition is now filed by said plaintiff, The Iowa Homestead Company, in the office of the clerk of the district court of said Webster County, Iowa, claiming of you, that the said Homestead Company is in possession, & has the legal title to certain lands in the alternate sections, within five miles of The Des Moines, above the Raccoon Fork, that you claim in some way an adverse title thereto, that you be enjoined from prosecuting actions at law or pre-emption to said lands to quiet the plaintiffs title, and for other relief; and that, unless you appear thereto and defend before noon of the second day of the next term of said court, commencing at Fort Dodge, on the 12th day of October, 1868, default will be entered against you, and judgement rendered thereon.

Dated this 6th day of October, 1868.

THE IOWA HOMESTEAD COMPANY,
Plaintiff.

GRANT & SMITH, *Attorneys.*

THE IOWA HOMESTEAD COMPANY
vs.
THE DES MOINES NAVIGATION & RAILROAD Company.

This notice came into my hands on the 9th day of October, 1868, and the within-named Thomas Cotter, W'm Wells, John McDermott, Jacob Crouse, by leaving a copy of the same, and reading the same in Fort Dodge, Webster County, on the 10th day of October, 1868.

JACOB WEALZ,
Sheriff of Webster County, Iowa.

In the district court of Webster County, Iowa.

IOWA HOMESTEAD COMPANY
vs.
THE DES MOINES NAVIGATION & R. R. Co., The Des Moines Valley R. R. Co., Edwin C. Litchfield, Elec. B. Litchfield, Sam. G. Wolcott, & others, & Roswell S. Burrows.

To said defendants above-named:

You are hereby notified that there is now on file in the office of the

clerk of the district court of Webster County, Iowa, the petition of plaintiffs aforesaid, claiming of you that the said Homestead Company is in possession, and has the legal title to certain lands in the alternate sections within five miles of the Des Moines River, above the Raccoon Fork; that you claim in some way an adverse title thereto; that you be enjoined from prosecuting actions at law or pre-emptions to said lands to quiet the plaintiff's title, and for other relief. You are, also, notified that, unless you appear thereto and defend before noon of the 2nd day of the term of the said district court of Webster County, to be
8 held on the 12th day of October, 1868, a default will be entered against you, and judgement rendered thereon.

IOWA HOMESTEAD COMPANY.

GRANT & SMITH, *Att'ys for Pl'ff.*

DES MOINES, IOWA, 10*th of October*, 1868.

Accepted service for the defendants The Des Moines Navigation and Railroad Company, Edwin C. Litch & Electus B. Litchfield.

J. BROWN,
Agent of said Defendants.

9 The State of Iowa vs. The Des Moines Navigation and Railroad Company, Samuel G. Wolcott, W'm B. Wells, Roswell S. Burrows, Edwin C. Litchfield, W'm J. McAlpine, Richard B. Chapman, Albert H. Tracy, Harriet Tracy, Electus B. Litchfield, Edwin Wade, John Stryker, The Des Moines Valley Railroad Company, Thomas Cotter, Jacob Crouse, John P. McDermott, Francis W. Tracy:

Whereas The Iowa Homestead Company has filed in our district court for the county of Webster, a petition claiming that the said homestead company, a corporation created by the laws of Iowa, has the legal title to the lands, a copy of which is hereto annexed, and that you, or some of you, have brought and intend to bring certain actions at law against persons in possession of said lands, to divert the title of said Iowa Homestead Company, and that you, or some of you, are about to prove up and claim pre-emptions on some of the lands which are named in the list hereto attached, and has prayed in said bill to grant
10 them title to said lands:

Now these are to command you and each of you, your agents, attorneys, servants, that you do wholly refrain from prosecuting said actions at law, or either of them, and that you wholly refrain from further applying for or proving up pre-emptions on any of said lands until the further order of our said district court for the county of Webster.

And you will disobey this writ at your peril.

Witness, and in testimony I, W. Lumpkins, clerk of the district court, have hereunto subscribed my name and affixed the seal of said court at office in Fort Dodge, this sixth day of October, A. D. 1868.

[SEAL.] W. LUMPKINS,
Clerk D. C.

List of lands deeded to the Iowa Homestead Company, November 12th, 1863, which are included in the deed from the State of Iowa to Des Moines Navigation and Railroad Company, May 3rd, 1858

11	Part of sections.	Sec.	T'p.	R.	Acres.
	WEBSTER COUNTY.				
	E. ½ of S. E., N. fr. ½ N. E., & N. fr. ½ N. W	1	87	27	205. 44
	All of 3, & S. W	5	"	"	833. 90
	W. ½ of S. E. ¼ of 7 & S. ½ of	9	"	"	763. 30
	N. ½ of N. W., & E. ½ S. W	11	"	"	160. 00
	S. W., N. W. fr. ½ & W. ½ S. W	3	88	27	120. 00
	All of 5, 7, & 9, & W. ½ of	15	"	"	2, 260. 16
	W. ½ of N. E., & W. ½ of S. E	15	"	"	160. 00
	All of 17, 19, & 21, (except W. ½ of N. W. 17)	21	"	"	1, 799. 10
	S. ½ N. E., S. ½ N. W., & S. ½ of	23	"	"	480. 00
	All of 25, & S. W. S. W., & S ½ of N. E	27	"	"	760. 00
	N. W. of S. E. 27, & all 29, &	33	"	"	1, 320. 00
	E. ½ of N. E., & N. ½ S. W	31	"	"	151. 68
	S. W. of S. W. of 31, & S. ½ N. E	35	"	"	111. 68
	N. ½ S. E	35	"	"	80
	W. ½ N. E., & W. fr. ½ & S. E. ½	19	89	27	583. 92
	S. ½ of S. W. of 21, & S. ½ N. W	27	"	"	160
	W. ½ S. E., & S. E. of S. E., & S. W. ¼	27	"	"	280
	All 29, 31, &	33	"	"	1, 943. 72
	N. ½ of N. W., & S. E. N. W	35	"	"	120. 00
	N. ½ S. E., & S. W	35	"	"	240. 00
	Lots 1, 9, & 10	1	87	28	82. 00
	Lots 4, 5, 6, & 7, & W. ½ of S. W	1	"	"	293. 84
	N. fr. ½, & S. W. of 3, & all of 5, 7, &	9	"	"	2, 454. 24
	N. ½ & S. E	11	"	"	480. 00
	All of 1, & N. fr. ½ of	3	88	28	1, 188. 74
	N. fr. ½ of 3, & S. E	7	"	"	561. 44
	S. ½ of 9, & S. W	11	"	"	400. 00
12	E. ½ & N. W. ¼	13	88	28	480. 00
	Lot 7, S. W. S. E., & S. ½ S. W	15	"	"	165. 55
	N. W. of N. W	15	"	"	40
	N. E. of 17, & S. fr. ½	19	"	"	470. 50
	N. ½ of N. E., N. W. fr. ¼	19	"	"	231. 08
	E. ½ N. W., & N. E. 21, & lots 1, 2, 3, 5, 6, & 7	23	"	"	448. 92
	N. ½ S. E., & S. E. N. E	23	"	"	120. 00
	E. ½ S. W., & S. ½	27	"	"	400. 00
	Lots 2 & 3, & N. W. fr. ¼	37	"	"	267. 28
	All of 29 & 31, & S. W	33	"	"	1, 419. 08
	N. ½ N. E., & S. E., & W. ¼	35	"	"	513. 25
	S. W. N. E., & N. W. fr. ¼	1	89	28	174. 08
	N. ½ S. E. S. W	1	"	"	24. 00
	All of 3, 5, 11, 15, 23, 28, &	27	"	"	4, 395. 18
	N. E. N. E., & lots 1, 2, 3, 4, 5, & 6	7	"	"	312. 99
	N. ½ & S. E. 9, & W. ½ of	13	"	"	880. 00
	N. ½ of N. E., & W. ½ S. E., & S. E. S. E	13	"	"	200. 00
	E. ½ S. E., & N. W. S. E., & N. E	17	"	"	280. 00
	N. E. S. W., & S. E. N. W., & N. E. N. W	17	"	"	120. 00
	E. ½ & S. W. of 21, & S. ½ N. E	29	"	"	500. 00
	S. ½ & N. E. of 33, & all	35	"	"	1, 120. 00
	E. ½ of	7	90	28	320
	N. W. fr. ½, & E. ½ S. W., N. W. S. W	7	"	"	280. 39
	All of 9, & S. ½ of	11	"	"	960. 00
	N. ½ of N. W. 13, & all 15, 17, 19, 21, &	23	"	"	3, 280. 13
	S. W. N. W., & N. ½ S. W	25	"	"	120. 00
	All 27, 29, 33, 35, & E. ½ & lots 1, 2, 3, & 4	31	"	"	3, 050. 27
	All of 1, & N. E. N. E	3	87	29	712. 53
	Lot 1, & N. E. N. E. of	1	88	29	94. 45
13	N. W. S. E., W. ½ S. W	1	88	29	120. 00
	All 3, 5, 7, 9, 11, 13, 15, & 17, &	21	"	"	5, 913. 48
	All of (except N. E. N. E.) 23, & all 25, &	27	"	"	1, 880. 50
	N. E. N. E., & N. W. N. E. 29, & all	35	"	"	720. 00
	Lots 1, 2, & 3, & S. E. S. E	1	89	29	149. 00
	Lot 1 of	1	90	28	4. 18
	Lots 1 & 2, & S. E. N. E	2	"	"	132. 29
	Lots 1 & 2 of	25	"	"	78. 88
	E. ½ N. E., & E. ½ S. E	1	88	30	186. 56
	HAMILTON COUNTY.				
	All except W. ½ S. W. of	5	87	26	583. 98
	S. ½ of	9	"	"	32. 00
	S. W. S. W. 29, all of	31	88	26	620. 66
	WEBSTER COUNTY.				51, 013. 92
	Lots 4. 5, 6, 7, & 8, & N. W. ¼ & W. ½ S. W	1	89	29	452
	All of 3 & 5. & E. ½ of 7, all of 9, 11, 13, 15 17,		"	"	7, 199. 16
	N. E. N. E. 19, all 21, W. ½ & S. E. 23, all 23 & 27				

E. ½ of 29, all of 23, &	35	"	"	1,600.00
Lots 7, 8, 9, 10, & 11, & S. ½ S. W	7	89	28	285.94
All of 31 on W. S. River, & lots 1, E. S. River		"	"	657.34
Lots 5, 6, 7, 8, & 9, W. S. River, & in	19	89	28	119.35
All of sc. 1 W. of river; all of	3	90	29	1,111.90
E. ½, & S. ½ N. W. & S. W. 5, E. ½, & E. ½ N. W	7	"	"	952.39
E. ½ of S. W., S. W. 7, all of 9 &	11	"	"	1,400.78
P'rt of 13 on W. S. River, (lots 5, 6, & 7, & N. W. N. W.)	13	90	29	189.14
All of 15, 17, N. E. 19, N. ½ 21, & N. ½	23			279.31
S. E. S. E., Humbolt County	35	91	29	40.00
Total				66,102.04

14 I hereby certify that I served the within notice on Jacob Crouse on the 9th day of October, 1868, by reading and delivering a copy to his wife, being a member of his family over 14 years of age, and on John P. McDermott by reading a copy and leaving the same with his wife, she being a member of his family over 14 years of age. Done on the 9th day of October, 1868.

JACOB WALZ,
Sheriff of Webster County, Iowa.
Per B. B. GOODRICH, *Dep't.*

I, Jacob Walz, sheriff of Webster Co., hereby certify that I personally served the same on W'm Wells and Thomas Cotter by reading the same to them and delivering them a copy of the same in Fort Dodge, Webster County, on the 9th day of October, 1868.

Fees, 4 55.

JACOB WALZ,
Sheriff of Webster County, Iowa.

15 *Bond.*

Know all men by these presents that we, The Iowa Homestead Company, principal, and Thomas Sargent, surety, are held and firmly bound unto The Des Moines Navigation and Railroad Company, Samuel G. Wolcott, William B. Wells, Roswell S. Burrows, Edwin C. Litchfield, William J. McAlpine, Richard B. Chapman, Albert H. Tracy, Francis W. Tracy, Harriett Tracy, Electa B. Litchfield, Edward Wade, John Stryker, The Des Moines Valley Railroad Company, Thomas Cotter, Jacob Crouse, and John McDermott, in the penal sum of five hundred dollars; to which payment we bind ourselves and each of us, jointly, by these presents. Given under our hands this the 6th day of October, 1868.

The condition of this obligation is, that whereas the above-named Iowa Homestead Company, plaintiff, has sued out of the district court of Webster County, Iowa, an injunction against the above-
16 named obligors, defendants, a writ of injunction to restrain them from doing certain acts named in said suit of the said Iowa Homestead Company, shall pay to the obligor, and each of them, all damages that may be adjudged against them by reason of the wrongful suing out of said writ, this obligation shall be void; otherwise it shall remain in full force and virtue.

THE IOWA HOMESTEAD COMPANY,
By GRANT & SMITH, *their Attorneys.*
THOMAS SARGENT.

STATE OF IOWA, *Webster County, ss:*

I, Thomas Sargent, do say upon oath I am worth, in property, in the

State of Iowa, not exempt from execution, over and above my liabilities, the full amount of the within bond; that the said real estate above mentioned does not include a homestead; that it is owned by me in my name; that the same is free from encumbrance.

17 THOMAS SARGENT.

Subscribed and sworn to before me Oct. 6, 1868.

W. LUMPKIN,
Clerk of District Court, Webster County, Iowa.

At chambers, city of Davenport, Scott County, the State of Iowa.

Ordered that a temporary writ of injunction do issue, as prayed, on plaintiff's filing bond in penal sum of $500, conditioned as required by law in the sureties to be approved by the clerk of Webster County, Iowa, district court. Dated 1st day of Oct. term, A. D. 1868.

JNO. F. DILLON,
Chief Justice Sup. Court, Iowa.

18 STATE OF IOWA:

Webster district court, Oct. the 13, 1869.

THE IOWA HOMESTEAD COMPANY
v.
THE DES MOINES NAVIGATION COMPANY & others. } In equity.

In this cause come the defendants Litchfield and John Stryker, and file their affidavit, bond, and petition for the transfer of this cause to the circuit court of the United States for the district of Iowa, under certain acts of Congress of the United States; and the court being satisfied that the said affidavit and petition are sufficient under the law, and said bond being approved by the court, it is ordered that this cause be transfer'ed to said circuit court of the United States for the dis-
19 trict of Iowa, as to said defendants in re, and the clerk of this court is ordered to make the proper papers for said transfer.

Proceedings had in the district court of Webster County, Iowa, begun and holden on the 12th day of October, A. D. 1868.

Present, D. D. Chase, sole presiding judge for the 11th judicial district of Iowa—

When the following among other proceedings were had:

THE IOWA HOMESTEAD COMPANY
vs.
THE DES MOINES NAVIGATION & RAILROAD Company et al. } Oct. 16th, 1868.

20 And now, on this day, comes the defendants Crouse, McDermott, and Cotter, by their attorney, G. Parsons, and files a motion to dissolve the injunction, which, coming on to be heard, and the court being fully advised in the premises, said motion is sustained as to them. Whereupon this cause is ordered transfer'ed to the circuit court of the United States as to other defendants.

STATE OF IOWA, *Webster County, ss:*

I, W. Lumpkin, clerk of the district court in and for said county and State, do hereby certify that the above and foregoing is a true and correct copy of all the papers in this case, and record entries made, as shown by papers and records of this office.

In testimony whereof I have hereunto set my hand and official seal this 26th day of February, A. D. 1869.

[SEAL.] W. LUMPKIN,
Clerk D. C.

Fees and costs, (paid in full by Thomas Sargent, agent for pl'ff,) $17 75.

21 (Endorsed as follows:) No. 121. Equity. Transcript. The Iowa Homestead Co. vs. The Des Moines Nav. & R. R. Co. Filed M'ch 17, 1869. Geo. B. Corkhill, clerk. Grant.

Webster district court, Oct. 13, 1868.

THE IOWA HOMESTEAD CO.
vs.
THE DES MOINES NAVIGATION CO. AND OTHERS

In this cause the defendants Litchfield and John Stryker, come and file their affidavits, bond and petition for the transfer of this cause to the circuit court of the United States for the district of Iowa under certain acts of Congress of the United States. And the court being satisfied that said affidavit and petition are sufficient under said
22 law, and said bond being approved by the court, it is ordered that this cause, as to said defendants, be transfer'ed to said circuit court of the United States for the district of Iowa, and the clerk is ordered to make the proper papers for said transfer.

Mr. CLERK: Please make the above entry in this cause, and the further entry that as to the other defendants, the cause is continued by agreement.

GRANT, *for Pl'ff.*
for Def't.

(Endorsed as follows:) The Iowa Homestead Company vs. The Des Moines Navigation Company.

23 And now on this day, June 25, 1869, comes the parties and file the followin' petition, affidavit, and bond by agreement, in place of the originals of the same; which were filed in Webster County district court, which are lost.

Affidavit.

District court, Webster County, Iowa.

THE IOWA HOMESTEAD COMPANY
vs.
EDWIN C. LITCHFIELD, ELECTUS B. LITCHfield, & John Stryker, impleaded with Roswell Burrows, The Des Moine' Nav. & Railroad Co., & others.

STATE OF IOWA, *Webster County, ss:*

I, John Brown, of Des Moines, in the County of Polk, in said State,

being duly sworn, do depose and say that I am the agent of the
24 def'ts Litchfield and Stryker in the above-entitled action; that the same is now pending in the district court of Webster County, Iowa; that the said defendants for whom I am agent as aforesaid, are citizens of the State of New York, and that the plaintiff is a citizen of the State of Iowa; that the matter in controversy and dispute between this plaintiff and each and every of the said defendants, exceeds the sum of five hundred dollars, exclusive of costs; that I have reason to believe, and do believe that, from prejudice and local influence, said defendant will not be able to obtain justice in the State court of Iowa, in which this action is pending and untried.

JOHN BROWNE.

Subscribed and sworn to by John Browne, before me, this 15 day of May, A. D. 1869.

GEORGE B. CORKHILL, *Clerk.*

25 Know all men by these presents that we, Edwin C. Litchfield, Electus B. Litchfield, & John Stryker, as principals, and John Browne, as surety, are hereby held and firmly bound unto The Iowa Homestead Company in the penal sum of one hundred dollars, lawful money of the United State'; to the payment of which, well and truly to be made, we bind ourselves, jointly and severally, firmly by these presents. The condition of this is such, that if the said Edwin C. Litchfield, Electus B. Litchfield, & John Stryker, shall enter or cause to be entered in the circuit of the United States to be held in and for the district of Iowa, copies of all process, pleadings, deposition, testimony, and other proceedings in a certain suit or action now pending in the district court of the County of Webster, and State of Iowa, in which The Iowa Homestead Company is plaintiff, and said Edwin C. Litchfield, Electus B. Litchfield, and John Stryker, impleaded, &c., are defendants, and shall do such other appropriate acts, as by the act of Congress, approved July 26, 1866, entitled "An act for the removal of causes in certain cases from State courts," are required to
26 be done upon the removal of a suit into the United States court, then this obligation to be void; otherwise of force.

ED. C. LITCHFIELD,
E. B. LITCHFIELD,
JOHN STRYKER,
By J. M. ELLWOOD, *their Att'y.*
JOHN BROWNE.

STATE OF IOWA, *Polk County, ss:*

I, John Brown, of said county, do depose and say that I am surety in the foregoing bond; that I am a resident and freeholder of, and within the State of Iowa, and am worth double the amount of the within bond over and above all my liabilities, and property exempt from execution.

JOHN BROWNE.

Subscribed and sworn to before me this 15th day of May, A. D. 1869.

GEORGE B. CORKHILL, *Clerk.*

27 *Petition for the removal of cause into the circuit court of the United States.*

District court, Webster County, Iowa.

THE IOWA HOMESTEAD COMPANY
vs.
EDWIN C. LITCHFIELD, ELECTUS B. LITCHfield, & John Stryker, impl'd with Roswell Burrows, The Des Moines Navigation & R. R. Co., & others.

To the district court of Webster County, Iowa:

The petition of Ed. C. Lithfield, Electus B. Litchfield, & John Stryker, defendants in the above-entitled action, respectfully show that they are citizens of the State of New York; that the plaintiff is a citizen of the State of Iowa; that this action is now pending in the district court of Webster County, Iowa; that the matter in dispute herein exceeds the sum of five hundred dollars, exclusive of costs.

And your petitioner further shows, that he has in this court his affidavit as required by the act of Congress, approved March 2, 1867, entitled "An act to amend an act entitled 'An act for the removal of causes in certain cases from the State court, approved July 27, 1866.'"

28 And your petitioner files this his petition praying for the removal of this suit into the next circuit court of the United States to be held in and for the district of Iowa; and he herewith offer' the surety required by the said above-entitled act.

D. O. FINCH & J. M. ELLWOOD,
Attorneys for Defendants Litchfield, Litchfield, & Stryker.

This affidavit, bond, and petition are filed in place of the original filed in dist. court of Webster County, 13th Oct., 1868, the same appearing to be lost, and not returned.

GRANT, *For Pl'ff.*
J. M. ELLWOOD,
For Litchfields and Stryker.

29 And thereupon there issued out of the clerk's office of said court a subpœna in chancery, which said subpœna is in words & figures following, to wit:

30 *Subpœna in chancery.*

UNITED STATES OF AMERICA,
District of Iowa, ss:

The President of the United States to The Des Moines Navigation & Railroad Company, The Des Moines Valley Railroad Company, & others:

We command you and each of you, that you appear before the judges of the circuit court of the United States for the district of Iowa, at Des Moines, on the 1st Monday in May next, it being the rule day of next, (A. D. 1869,) to answer to the bill of complaint *to* Iowa Homestead Company, heretofore filed in the office of the clerk of said court, and then and there to receive and abide by such judgement and

decree as shall then or thereafter be made, upon pain of judgement being pronounced against you by default.

To the marshal of the district of Iowa; returnable to the second Tuesday of May, A. D. 1869, it being May 11th, A. D. 1869.

31 Witness the Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the U. S., at Des Moines, this the 12 day of April, A. D. 1869, and of the independence the year.

[SEAL.] GEORGE B. CORKHILL, *Clerk.*

MEMORANDUM.—The within-named defendant is notified that, unless he enters his appearance in the clerk's office of said court at the rule days aforesaid, on or before the day to which the above writ is returnable, as above stated, the complaint will be taken against him as confessed, and a decree entered thereon accordingly.

[SEAL.] GEORGE B. CORKHILL, *Clerk.*

(Endorsed thereon is the following:)

"I acknowledge service of this subpœna May 1, 1869, and will appear at May term, 1869, U. S. C. C.

"Des Moines Valley Railroad Company.

"By H. STRONG."

(Endorsed:) Filed May 3rd, 1869. George B. Corkhill, clerk.

32 The following is a copy of the bill filed in said cause:

Bill in equity.

STATE OF IOWA:

Webster district court.

THE IOWA HOMESTEAD COMPANY
vs.
THE DES MOINES NAVIGATION & RAILROAD Company and others.

To the district court of the county of Webster, in the State of Iowa:

The petition of the Iowa Homestead Company, and others:

1. That said company is a corporation duly created by the laws, and a citizen of the State of Iowa, for the purpose of buying and selling lands in said State; that said plaintiffs, by deed of purchase, begin'ing the 12th of Nov., 1863, acquired by and through the Dubuque & Sioux City Railroad Company, all the right of said company, the Dubuque & Pacific Railroad Company, and the State of Iowa, to about
33 fifty thousand acres of land, lying on the east side of the Des Moines River, in Webster and Humbold' counties, Iowa, being the odd sections of land within the limits of the Dubuque & Pacific Railroad grant of 1856, and the Des Moines River grant of 1856; a copy of the said list of lands is hereto annexed and made part of this bill. And by said deeds and certificates, the plaintiffs acquired a title to about twenty thousand acres of land, in the odd sections within said grants in Webster and Hamilton counties, west of said Des Moines River, a list of which is hereto annexed and made part of this bill. Of these lands the fifty thousand acres lying east of the Des Moines

River, are claimed by The Des Moines Navigation and Railroad Company, a corporation created by the laws of Iowa, and its assignees; and some title or claim to twenty thousand acres of land on the west side of the river is or has been made by The Des Moines Valley Railroad Company, a corporation created by and a citizen of the State of Iowa.

2. That, on the 8th of August, 1846, by an act of Congress, a grant of land was made to the Territory of Iowa, of alternate sections of land, within five miles of the Des Moines River in said State to improve the navigation from its mouth to The Raccoon Fork; said land to be selected within said Territory by an agent to be appointed by the governor, subject to approval by the Secretary of the Treasury of the United States; said lands to become the property of the State when admitted into the Union, which event occurred about a year after. On the 17th of October, 1846, the governor of the Territory of Iowa, was notified by letter from the Commissioner of the Land Office, "that, under the grant, the Territory of Iowa was entitled to the vacant lands, in alternate sections, within five miles on each side of the Des Moines River, from the northern boundary of Missouri to the Raccoon Fork." The Territorial and State authorities acquiesced in the opinion expressed in this letter, and an agent was appointed to make selections, and he did make the selections below the fork of the Raccoon. No question arose as to the further extent of this grant until nearly two years
34 thereafter. On the 24th of February, 1847, the State of Iowa appointed a board of public works to improve the navigation of said river. In a letter to the secretary of this board, dated February 23d, 1848, R. M. Young, Commissioner of the General Land Office, after answering a letter to him, on other subjects, says: "A question has arisen as to the extent of the grant to Iowa, under act of August 8th, 1846, and the opinion of this office requested."

"The grant is of one equal moiety in alternate sections, and on each side of said river, to be selected within said Territory, &c., the proceeds to be applied to improve the navigation of the river from its mouth to the Raccoon Fork. Hence the State is entitled to the alternate sections, within five miles of the Des Moines River, throughout its whole extent, within the limits of Iowa."

On the 19th of June, 1848, a proclamation was issued by the President, and countersigned by said Young, ordering into market some of the lands in the odd sections, above the Raccoon Fork, which, under the expressions of the letter of February 23, belonged to the State.

The board of public works in Iowa protested against this, but no notice was taken of it by said Young. On the 8th of January, 1849, the delegation from Iowa in Congress called the attention of the Secretary of the Treasury to the constructions of the act of August 8, 1846, and claimed the alternate sections of land on the said river above the fork of the Raccoon. The Secretary of the Treasury, R. J. Walker, in reply to this letter, on the 2d of March, 1849, conceded that the grant extended to the source of the river, which would include a large part of what is now the State of Minnesota, and would make the grant nine hundred thousand acres of land.

On the 2d of March, 1849, Walker, Secretary of the Treasury, by letter advised Young, Commissioner, of this opinion, and on June 16, 1849, Young directed the proper land officers to withhold the lands from sale in the odd-numbered sections. On the 19th of December, 1849, Butterfield, Commissioner, informed Jesse L. Williams, secretary of the board of public works, that no selections had been made above the forks.

35 On the 14th of January, 1850, the Commissioner of the Land Office informed Ewing, Secretary of the Interior, a new officer created by law, and taking charge of the public lands, that a list of lands charged against Iowa amounted to 825,078 acres, and that when adjusted the amount between the Raccoon Fork and the source of the river was estimated to contain 900,000 acres.

On the 13th of March, 1850, the said Commissioner submitted to Ewing, Secretary, three list' of lands, the first of which showed the tracts falling within the limits of the grant above the Raccoon Fork, under the decision of the Secretary of the Treasury of March 2, 1849. On the 6th of April, 1850, Ewing, Secretary of the Interior, reversed the opinion of Walker, held that the grant did not extend above the forks, refused to confirm the selection of March 13, and required the Commissioner to report to Congress, that that body, if it saw fit, might extend the grant.

On the 14th of April, 1850, the Senators and Representatives from Iowa appealed from that decision to the President. The President, Taylor, referred the question to Reverdy Johnson, Attorney General, who, on the 19th of July, 1850, gave his opinion, that the grant extended above the forks to the source of the river. Before this opinion was delivered, the President died, a new Cabinet was appointed, and instead of giving effect to Johnson's opinion, the question was submitted to Crittenden, the new Attorney General, who, on the 30th of June, 1851, gave his opinion that the grant did not extend above the Raccoon Fork. A. H. H. Stuart, Secretary of the Interior, on the 26th of July, 1851, concurred in this opinion, but, on the 29th of October, 1851, addressed a letter to the Commissioner of the General Land Office, directing him to select and report for his approval a list of the alternate sections of land claimed by the State of Iowa, above the Raccoon Fork, assigning as a reason therefor, that, by approving the selections without prejudice, the question would be left open to the construction of the judiciary, and that the questions involved were more of a judicial than an executive character, and that the question must ultimately be settled by the judiciary.

36 On the following May, three lists of lands were prepared in the General Land Office, headed as follows:

"No. 1. Showing the tracts falling within the limits of the Des Moines grant, above the Raccoon Fork, so far as the surveys have extended, under the decision of Secretary of the Treasury, March 2, 1849, that such grant extended to the northern boundary of the State.

"No. 2. Showing tracts disposed of within these limits, between the date of one of the orders limiting the grant, and one extending it.

"No. 3. Showing the vacant lands subject to the claim of the State."

The Secretary of the Interior on the 30th of October, 1851, approved of this last list in accordance with his view of October 29.

On the 30th of October, 1851	214,391.58	acres
" 10th of March, 1852	143,908.37	"
" 17th of December, 1853	33,142.43	"
" 30th " 1853	12,812.51	"

were thus certified and approved by the Secretary of the Interior. These approvals were certified under the reservations above referred to in the letter of October 29, 1851.

The 12,812.51 acres above referred to, were selected under the act of September 4, 1841, giving to each of the new States 500,000 acres of land on coming into the Union.

On the 21st of March, 1856, the Commissioner of the General Land Office, decided that the grant did not extend above the Raccoon Fork. The question was brought anew before the Secretary of the Interior, and he referred it to the Attorney General, who advised a proposal of settlement. This was not accepted by the State of Iowa. On the 7th of May, 1858, the Secretary of the Interior rejected the claim of the State. An appeal was taken to the President, who referred the question to Attorney General Black, who decided, in a letter dated November 22, 1858, that the claim of the State did not extend north of the Raccoon Fork.

On December, 1859, the Supreme Court of the United States, in suit between E. C. Litchfield v. The Dubuque & Pacific Railroad Company—
Litchfield claiming under the act of 1846, held that the grant did
37 not extend north of the fork of the Raccoon, and that the acts of Stuart & McClelland, Secretaries of the Interior, in reserving or setting apart the lands north of the Raccoon Fork, were null and void, and by that decision carried out the suggestion of the Secretary of the Interior, that the question was a judicial one and must be settled by the courts.

3. On the 15th of May, 1856, Congress passed an act, making a grant of land to the State of Iowa in alternate sestions, to aid in the construction of certain railroads in said State. By section one, among other roads, a grant of land was made of alternate sections, designated by odd numbers, of six sections of land in width on each side of a railroad, from Dubuque to a point on the Missouri River, at or near Sioux City; and if when the line of said road was definitely fixed, the United States had sold any of said six sections, then the State was authorized, subject to the approval of the Secretary of the Interior, from other alternate sections within fifteen miles of the line of the road to make up the quantity. Said section provided that the lands so granted should be applied exclusively to the construction of the road, and excluded from the grant all lands before reserved by act of Congress, or any other manner, by competent authority for the purpose of aiding in works of internal improvement or any other purpose whatever. Congress had, prior to this, in 1850, made a grant to the States of certain swamp lands, which might and did, upon survey and location, include a part of the lands otherwise included in the railroad grant of 1856.

On the 14th of July, 1856, the State of Iowa, by legislative act accepted the grants made by the act of Congress of May 15, 1856, and parcelled out the lands to the various railroad companies therein referred to, and by the fifth section of said act, so much of the lands, interests, rights, powers, and privilages as are or may be granted and conferred under said act of Congress, to aid in the construction of the railroad from Dubuque to Sioux City, was granted and conferred by the State to the Dubuque & Pacific Railroad Company, a body corporate
created by and existing under the laws of Iowa. The act of Con-
38 gress of May 15, 1856, authorized the State to dispose of the lands in this way, and a quantity of land not exceeding one hundred and twenty sections for every twenty miles of road built, was to be conveyed to the company, and whenever the governor of the State should certify to the Secretary of the Interior that any continuous twenty miles of road was completed, then a hundred and twenty sections of land next nearest that, was to be sold and conveyed to the said railroad corporation, and so on from time to time, until the whole road was completed, and if any of the road was not completed in ten days, no further conveyance was to be made, and the lands unsold, were to revert to the

United States. The Iowa act of July 14, 1856, required the Dubuque & Pacific Railroad Company to comply with these terms. The said Dubuque & Pacific Railroad Company accepted the terms of said act. The most of the road was surveyed by the 18th of April, 1857. A plat of the same was by that day presented by the governor of Iowa to the Secretary of the Interior, and the alternate sections on the line thereof designated and set apart by him to the State of Iowa under the terms of the grant of the 15th of May, 1856. The line of this road crossed the Des Moines in an east and west direction, above the Raccoon Fork, and though a claim had been made, and even lands certified under the act of August 8, 1846, yet, after the decision referred to by the Secretary of the Interior, the State of Iowa asked, and the Secretary of the Interior reserved the lands, within the five miles of the Des Moines River above the Raccoon Fork, for the railroad instead of the river grant, and said lands were reserved by proclamation of the President immediately after passage of the act, 1856.

The said Dubuque & Pacific Railroad Company immediately after the location of said railroad, and the selection and setting apart of the lands granted under said act, proceeded to build their road. The said railroad company performed all the conditions of said act up to the first day of June, 1861. In the month of August, 1861, the Dubuque & Pacific Railroad Company was merged in a new company, called the Dubuque & Sioux City Railroad Company, a corporation duly created under
39 the laws of the State of Iowa, and which succeeded to all the rights and obligations of the Dubuque & Pacific Railroad Company. On the first of January, 1861, the Dubuque & Pacific, or the Dubuque & Sioux City Railroad Company, had built and equipped five sections of twenty miles each, making one hundred miles of continuous railroad, and by the terms of the grant from Congress and the Iowa legislature, had acquired a complete and perfect title to the lands afterwards conveyed by the Dubuque & Sioux City Railroad Company to the plaintiff's assignors. The governor of Iowa in March, 1860, certified that the four sections of twenty miles each of said railroad from Dubuque to Sioux City, were completed according to the act of Congress of the 15th of May, 1856. On the 25th of April, 1861, the governor of Iowa certified that the Dubuque & Sioux City Railroad Company had completed the fifth continuous twenty miles from Dubuque west, making one hundred miles, and, on the 29th of July, 1865, the governor of Iowa certified that said company, on the 2nd of June, 1864, had completed the sixth section of twenty miles of said road west from Dubuque.

By the completion of said first five sections of twenty miles each, the said Dubuque & Sioux City Railroad Company, on the 21st of April, 1861, became entitled to the lands, on both sides of the Des Moines River, conveyed to and now held by the plaintiffs.

During the progress of the controversy between the State and Federal officers in relation to the construction of the act of 1846, selections of land which might belong to the State were made and approved as above stated, but not otherwise. After the opinion of Attorney General Black, in 1858, the State of Iowa and the Secretary of the Interior treated the lands in Iowa as belonging to the railway (not river) grant, and on application of The Des Moines Navigation Company for a title, as assignee of the State, was refused by the Secretary of the Interior, in 1860 and 1863.

On the 11th of April, 1863, the Commissioner of the General Land Office certified, and the Secretary of the Interior approved the selections, that the Dubuque & Sioux City Railroad Company were entitled

40 to the lands now claimed by the plaintiffs, as purchasers of the Dubuque & Sioux City Railroad Company, and the said railroad company acquired title to the same when the certificate was given by the governor, in 1861, that they had completed the fifth section of twenty miles of their road.

The State of Iowa, under the river grant of the 8th of August, 1846, undertook to improve the navigation of the river, and, up to the 9th of June, 1855, had sold about 327,000 acres of land, of which amount 58,830 acres were located above the Raccoon Fork. On the 9th of June, 1854, the State made a contract with The Des Moines Navigation & Railroad Company, a corporation created by the laws of Iowa, to improve the navigation of the river, and to convey to said corporation all the remaining lands belonging to the State under the act of 1846. This corporation made some progress in their work, and as the improvements progressed, the State, by its proper officers, issued to the company certificates of land, the first dated the 14th of May, 1855, for 88,853.10 acres; the second, May 6th, 1856, for 216,636.54 acres, making in all 205,489.64, all located above the Raccoon Forks, except about 50,000 acres, and including the lands owned or claimed by the plaintiffs, east of the Des Moines River.

The Commissioner of the General Land Office and the Secretary of the Interior refused to certify or convey these lands to the State or The Des Moines Navigation & Railroad Company, their last act being to set apart the lands on the 30th of December, 1853, and there being no other provision made for payment to The Des Moines Navigation & Railroad Company. The State and the said company, in pursuance of joint resolutions of the legislature of March 22, 1858, settled the difficulties arising out of the construction of the grant of August 8, 1846, whereby the State relinquished its title to the land certified by the State officers to the company, to wit, 205,489.64 acres. The company paid the State twenty thousand dollars, and abandoned the work.

The State, on the same day, March 22, 1858, by legislative act, conveyed its remaining interest in the lands to the Keokuk, F't Des Moines & Minnesota Railroad Company, now called The Des Moines Valley Railroad Company, a corporation created by the laws of Iowa, sub-

41 ject to the grants made by the State to the railroad companies under the acts of May 15 and July 14, 1856.

On the 2d of March, 1861, Congress, by a joint resolution, held that the grant of August 8, 1846, did not extend above the Raccoon Fork, and released to the State of Iowa certain lands above the Fork which had been improperly certified to the State by the Secretary of the Interior, and were then held by bona-fide purchasers from the State. This joint resolution was construed by the State and Congress, through their executive officers, to refer to certain lands above the Fork, conveyed to settlers or other individuals, amounting to about 58,000 acres, a list of which is herein referred to, and includes no part of the lands claimed by the plaintiffs. At the date of this resolution, the Dubuque & Sioux City Railroad Company, had acquired from the State, with the assent of the Secretary of the Interior, the title to the lands now claimed by the plaintiff in this controversy. The certificates therefor had then all been issued by the governor of the State.

On the 12th of July, 1862, Congress passed an act whereby the grant of lands to the Territory of Iowa by act of Congress of August 8, 1846, was extended so as to include the alternate sections of land lying within five miles of the Des Moines River, above the Raccoon Fork, to the northern boundary of the State. Said act & resolution of 2 March,

1861, were passed at the request of the legislature of Iowa, with an express reservation of all rights to the grantors of the plaintiff. The resolutions of the legislature are hereto annexed. Said act provided that, if any of the lands had been sold or otherwise disposed of by the United States before the passage thereof, except those released by the resolution of March 2, 1861, (1862 miscalled in the act,) the Secretary of the Interior was directed to set apart an equal amount of lands lying within the State, to be certified in lieu thereof, and if the State had sold any part of the lands lying within the limits of the grant, the title of which had proved invalid, any land which should be certified to the State in lieu thereof, by the provisions of said act, should be held as a trust fund for the benefit of the persons whose title had failed.

At the date of this act, the Supreme Court, in the case of Litchfield v. Dubuque & Pacific Railroad Company, 2 Black, 66, had decided that the grant of 1846 did not extend above the Raccoon Fork, and
42 that the title of The Des Moines Navigation and Railroad Company to such lands as had been certified and conveyed to them above the Rac'oon Fork, had failed. This decision was made at the December term of the court in 1859. The court in said cause held that the setting apart of these lands by Stuart, Secretary of the Interior, was a null and void act, and implied that the railroad company was entitled to the lands in dispute under the act of 1856. Under the act of July 12, 1862, the State of Iowa, through its officers and the Secretary of the Interior, treated the title of the Dubuque & Sioux City Railroad, under the act of 1856, as a good title. The State of Iowa passed resolutions appointing Josiah A. Harvey, register of the State land office, a commissioner to adjust with the General Government the claims of the State under the act of July 12, 1862, and, on the 22d of May, 1866, the said commissioner and the State of Iowa did adjust and settle the claims of the State under the resolution of March 2, 1861, and act of July 12, 1862, by a paper-writing, which was approved by the State of Iowa on the 20th of June, 1866. Both the Secretary of the Interior and the State of Iowa, in said settlement, treated the lands claimed by the plaintiff as having been sold or disposed of by the United States, under the act of *of* 1856, to the Dubuque & Sioux City Railroad Company, and the Secretary of the Interior set apart an equal amount of lands in lieu thereof, which were held by the State in trust for the parties whose title had proved invalid, which title so proved invalid *were* The Des Moines Navigation and Railroad Company.

The lands referred to in the resolutions of March 2, 1861, were settled by the State and the Secretary of the Interior, and were entirely different lands from these claimed by the Des Moines Navigation Company. The settlement of 1866 contained the following distribution of lands:

"Adjustment of Iowa Des Moines River grant under act of July 12, 1862, and joint resolution of March 2, 1861.

43 "DEBIT.

	Acres.
"The State of Iowa, the quantity of indemnity lands selected under special certificate dated April 25, 1863..	297, 603. 74
"The lands in place (meaning by in place, the odd sections not sold by Congress within limits of grant)....	167, 109. 02
"The lands in place confirmed by joint resolution March 2, 1861.....	44, 838. 64

"The quantity selected on the east fork Des Moines River, and certified to the State under original act of August 8, 1846	11,661.80
"The excess selected and approved to State under its 500,000-acre grant, 1841	35,473.54
	"556,686.74
"Remains due State	1,317.32
	"558,004.06

"CREDIT.

"Whole area of grant above Raccoon Fork	558,004.06"

By the act of the 12th of July, 1862, and said settlement, the State of Iowa became the trustees of The Des Moines Navigation & Railroad Company and its assigns, for so much of said lands above the Forks as the State had conveyed to them, a part of which, (about fifty thousand,) east of the Des Moines, was conveyed by the Secretary of the Interior and the State to the Dubuque & Sioux City Railroad Company; and, if the latter company's title failed, and The Des Moines Navigation Company's title was good, then a trustee for the plaintiffs in this suit.

As to these lands claimed by the plaintiffs west of the Des Moines River, the navigation company has never claimed them. The Des Moines Valley Railroad Company has disclaimed any title as to part of them, and claims title as to part. If they now assert any, they have none, they having received from the State indemnity lands in lieu thereof, which is, in law, a complete bar to their claim. Plaintiff prays that they may disclose what part they claim, if any.

The State of Iowa has recently conveyed, by quit-claim, all its title to the indemnity lands, under the act of July 12, 1862; but, as to
44 such of said lands as were held in trust by the State for parties whose title had failed, the conveyance, by quit-claim, does not pass the title held in trust; and, if it did, The Des Moines Valley Railroad Company holds them also in trust, and for no other purpose.

The said Des Moines Valley Railroad Company has executed a deed of trust to M. D. Gilman and N. A. Cowdrey of all such lands as they had or might obtain from the State for building their road, and no others.

After the passage of the act of July 12, 1862, and the acceptance thereof by the State of Iowa, and the settlements of May, 1866, Samuel G. Wolcott, a citizen of New York, claiming to be a purchaser of the east half of sec. 17, T. 87 N., R. 27 west, in the county of Webster, Iowa, from The Des Moines Navigation Company, by deed of date of August 1st, 1859, brought a suit in the circuit court of the United States for the southern district of New York, against The Des Moines Navigation & Railroad Company for a breach of warranty of title. This suit was brought by Wolcott, in New York, by consent of The Des Moines Navigation Company, outside of the jurisdiction of the State of Iowa, by the laws of which it was created, and where alone it could reside and be sued on such a contract, and was designed and intended by the parties to make an agreed case to settle the construction of an act of Congress, in which bill the plaintiff and defendant had the same interest, adverse to the claim of the plaintiffs in this suit, in which they

jointly paid the costs, and the attorneys employed were both really interested on the same side, and their object was to obtain an adju'cation of the rights of the plaintiff and others who were like situated and were not before the court. Though the suit was commenced before the settlement under the act of July 12, 1866, it was not decided in the Supreme Court until after the settlement under that act. The rghts of the plaintiff, as herein declared, were not set forth in the pleadings or alluded to by the court. The settlement of 1866 and the construction of the act of 1862 by the State and Federal Gover'ment were not known to the court, and the decision in that case is no bar nor precedent to control the action of this court on the question now presented.

45 The decision of the Supreme Court in that cause, holding The Des Moines Navigation Company's title good, was made at the December term of the Supreme Court for 1866.

After the settlement of the State with The Des Moines Navigation Company, in 1858, the said navigation company conveyed certain parcels of the lands now claimed by the plaintiff to the following persons, among others: Samuel G. Wolcott, W'm B. Welles, Roswell Burrows, Edwin C. Litchfield, W'm J. McAlpine, Richard B. Chapman, Albert H. Tracy, Francis N. Tracy, Harriet Tracy, Electus B. Litchfield, Edward Wade, and John Stryker. These parties, and others not known to the plaintiffs, have commenced a very large number of actions at law in this court, the plaintiff is informed, to the number of one hundred and fifty, against persons claiming both from the plaintiffs, or otherwise, to eject them from lands owned by the plaintiffs. A great many more actions at law have been commenced against other parties involving the same title; and actions at law are threatened to be brought directly against the plaintiff for the lands in dispute, which they have not contracted to sell, and of which they are in nominal possession, on which they pay taxes. A list of some of these suits, and the names of the parties and description of the lands claimed, are hereto annexed and made part of this bill. The Des Moines Navigation Company have also begun suits at law against claimants under the plaintiff's, or for the plaintiff's lands, which will appear by said list. These purchasers from the navigation company are said to be, and the plaintiff so charges were, stockholders in the corporation, and held the title to the lands claimed by them for their share, or parts of it, of stock in the corporation. Neither the navigation company, nor the stockholders thereof, were purchasers without notice. They knew the construction put on the act of Congress before they made their contract with the State, and they knew of the passage of the act of 1856, and its construction, before they made the settlement and received the conveyance from the State.

The Secretary of the Interior, O. H. Browning, at one time construed the decision in Wolcott's case to entitle the United States to all the lands claimed by the plaintiff, because the State had got other

46 lands in lieu thereof—one on the act of July 12, 1862; and he has allowed parties to apply for pre-emption to the lands claimed by the plaintiff. He has reversed this decision, in part, but the parties named as pre-emptors still claim title to the property adversely to the plaintiffs. A list of said applicants is hereto annexed and made part hereof.

The Des Moines Valley Railroad Company, formerly the Keokuk, Fort Des Moines & Minnesota Railroad Company, have obtained a quit-claim deed for, and claim title to, not only all the lands certified to the State of Iowa under the settlement of 1866, between the State and

Federal Governments, which were set apart to them within the limits of the grant, called lands in place, but they claim title to all the lands certified to the State in trust for these parties to whom the State had conveyed title, and which had failed. The State of Iowa has accepted the trust, and, any persons claiming to hold any of the trust lands, hold them subject to the trust. There has been no separation of these held in trust, for the bad title, from the others.

The plaintiffs allege that theirs is the better title to the lands claimed by them. A list of those conveyed to the Dubuque & Sioux City Railroad Company, within the limits of the Des Moines River grant, on each side of the river, is made out in separate tracts, and made part of this bill. Copies of the plaintiff's title-deeds and certificates are also annexed and made part of this bill. The plaintiff also attaches to this bill, and makes part thereof, a lists of the suits at law begun as herein set forth in part; certificates of the governor of Iowa and the Secretary of the Interior, conveying title to the Dubuque & Sioux City Railroad Company; copies of the settlement of the State of Iowa and the United States under the resolutions of March 26, 1861, and July 12, 1862; copies of the acts of Congress and legislature of Iowa, which relate to the controversy; copies of the correspondence of various public officials, which relate to the subject, and makes them all a part of this bill.

The plaintiffs allege that the title claimed by The Des Moines Navigation Company and their vendees, Walcott, Welles, Burrows, Edwin C. Litchfield, William J. McAlpine, Richard B. Chapman, Albert
47 H. Tracy, Francis W. Tracy, Harriet Tracy, Electus B. Litchfield, and John Stryker, is the inferior title, and one which the State had conveyed away and failed, and referred to in the act of July 12, 1862. That The Des Moines Valley Railroad Company have no title to either the lands claimed by the plaintiff, or to the lands conveyed to the State in trust for the party whose title had failed; and, if they have any legal title to such, they held it in trust for the navigation company and their assignees, or for the plaintiff. If the plaintiff's title is the one that has failed, and referred to in the act of July 12, 1862, then the State is the trustee of the plaintiff. The Des Moines Valley Railroad Company held the residue undivided, and are bound to surrender all claim*ed* derived from the State by their deed to the plaintiff, and are bound to consent to a severance of the lands belonging to the plaintiff in such case from the residue. Thomas Colter, Jacob Crouse, and John P. McDermott have no right to the pre-emptions claimed by them.

The said plaintiffs have been in possession of the lands claimed by them, themselves, or their vendees in contract, since 1861. They have paid the taxes thereon to the State of Iowa since, in all amounting to eighty thousand dollars; and, if their title has failed, they are entitled to have their taxes refunded since 1861 by the holder of the legal title, who has not paid them.

The plaintiff says he has no adequate remedy for the grievances complained of, except in a court of equity. He makes The Des Moines Navigation and Railroad Company, Samuel G. Wolcott, W'm B. Welles, Roswell Burrows, Edwin C. Litchfield, William I. McAlpine, Richard B. Chapman, Albert H. Tracy, Francis W. Tracy, Harriet Tracy, Electus B. Litchfield, Edward Wade, and John Stryker, The Des Moines Valley Railroad Company, and Thomas Colter, Jacob Crouse, John P. McDermott, parties defendant to this suit, and prays for a writ of subpœna against them, returnable to the next term.

The plaintiff prays that said parties may be enjoined from prosecuting

said actions, or any other actions at law, in relation to the title or possession of any of said lands until the final hearing of this bill;
48 that, on the final hearing of the bill, that the injunction be made perpetual; that said defendants, Colter, Crouse, and McDermott be enjoined perpetually from prosecuting any pre-emption to any of said lands; that the conflicting acts of the Secretary of the Interior and judicial decisions may be finally interpreted; that the plaintiffs may be quieted in their title and possession to said lands on both sides of the river; or, if the plaintiff's title to said lands is not the better title, and his title to said lands is the title conveyed by the State, and failed under the right interpretation of the acts of 1846, 1856, and 1862, that his title to an equal number of acres, in lieu thereof, be decreed and established; that an account be taken of said indemnity lands, and The Des Moines Valley Railroad Company be decreed to make partition thereof, and set apart and convey or relinquish to the plaintiff such lands as the plaintiff may be entitled to under said act of July 12, 1862, (the State of Iowa being acting trustee to do justice in the premises, and to convey to such party as may be established the true beneficiaries under said act;) that in the event of a decree that the plaintiff's present title or any part of it has failed, that the said Des Moines Navigation and Railroad Company and its asigns may be decreed to repay to the plaintiff all taxes which he has paid on said lands, and interest thereon.

And that said Des Moines Valley Railroad Company be decreed to release to the plaintiffs all claim to the indemnity lands set apart to the plaintiffs, and for such other relief as the nature of the plaintiff's case may require.

GRANT & SMITH,
Attorneys for Plaintiff.

STATE OF IOWA, *Scott County:*

I, James Grant, being duly sworn, depose on oath that I am one of the attorneys for the plaintiff; that the facts stated in the foregoing petition are all of them of record, except the allegations of the interest and intent of the parties in the suit of Walcott v. Des Moines
49 Navigation Company. I have examined the records referred to in the bill, and have been informed as to facts about the Walcott suit by parties who appeared to know them, and I believe the allegations of the bill to be true.

JAMES GRANT.

Sworn to and subscribed before me this [1st] day of October, 1868.
[SEAL.] JOHN F. DILLON,
Judge of the Supreme Court, Iowa.

50 EXHIBIT I.

EXECUTIVE OFFICE,
Des Moines City, Iowa, March, 1860.

STATE OF IOWA, *sct:*

In pursuance of the provisions of the 4th section of the act of Congress, approved May 15th, 1856, entitled "An act making a grant of land to the State of Iowa, in alternate sections, to aid in the construction of certain railroads in said State," I, Samuel J. Kirkwood, governor of the State of Iowa, do hereby certify that the construction of the par-

ticular twenty miles from the city of Dubuque, exhib'ted on the annexed map, has been completed according to law, being the fourth twenty continuous miles of said road.

In testimony whereof I have hereunto set my hand and caused to be hereto affixed the great seal of the State of Iowa the day and year above written.

[L. S.] (Signed) SAMUEL J. KIKWOOD.

By the governor:
(Signed) ELIJAH SELLS,
Secretary of State.

EXECUTIVE OFFICE,
Des Moines City, Iowa, April 25, 1861.

STATE OF IOWA, *sct:*

In pursuance of the provisions of the 4th section of the act of Congress, approved May 15th, 1856, entitled "An act making a grant of land to the State of Iowa, in alternate sections, to aid in the construction of certain railroads in said State," I, Samuel J. Kirkwood, governor of the State of Iowa, do hereby certify that the construction of the particular twenty miles from the city of Dubuque, of the Dubuque & Sioux
51 City Railroad, exhibited on the annexed map, has been completed according to law, being the fifth twenty miles continuous of said road.

In testimony whereof I have hereunto set my hand and caused to be hereto affixed the great seal of the State of Iowa the day and year above written.

[L. S.] (Signed) SAMUEL J. KIRKWOOD.
(Signed) ELIJAH SELLS,
Secretary of State.

EXECUTIVE OFFICE,
Des Moines City, July 29, 1855.

In pursuance of the provisions of the 4th section of the act of Congress, approved May 15th, 1856, entitled "An act making a grant of land to the State of Iowa, in alternate sections, to aid in the construction of certain railroads in said State," and of the 8th section of the act of June 2, 1864, amendatory thereof, I, William M. Stone, governor of the State of Iowa, do hereby certify that, on the 2d of June, 1864, and for nearly six months thereafter, the westerly terminus of the completed portion of the Dubuque & Sioux City Railroad was the east bank of the Cedar River, in sec. 12, T. 89 N., R. 14 west; and that the twenty miles of road next westerly thereof, as shown on the annexed map, being the sixth consecutive twenty miles from the city of Dubuque were completed and ready for the rolling-stock, within one year from the first day of July, 1864.

In testimony whereof I have hereunto set my hand and caused to be hereto affixed the great seal of the State of Iowa the day first above written.

[L. S.] (Signed) W. M. STONE.

By the governor:
(Signed) JAMES WRIGHT,
Secretary of State.

said actions, or any other actions at law, in relation to the title or possession of any of said lands until the final hearing of this bill;
48 that, on the final hearing of the bill, that the injunction be made perpetual; that said defendants, Colter, Crouse, and McDermott be enjoined perpetually from prosecuting any pre-emption to any of said lands; that the conflicting acts of the Secretary of the Interior and judicial decisions may be finally interpreted; that the plaintiffs may be quieted in their title and possession to said lands on both sides of the river; or, if the plaintiff's title to said lands is not the better title, and his title to said lands is the title conveyed by the State, and failed under the right interpretation of the acts of 1846, 1856, and 1862, that his title to an equal number of acres, in lieu thereof, be decreed and established; that an account be taken of said indemnity lands, and The Des Moines Valley Railroad Company be decreed to make partition thereof, and set apart and convey or relinquish to the plaintiff such lands as the plaintiff may be entitled to under said act of July 12, 1862, (the State of Iowa being acting trustee to do justice in the premises, and to convey to such party as may be established the true beneficiaries under said act;) that in the event of a decree that the plaintiff's present title or any part of it has failed, that the said Des Moines Navigation and Railroad Company and its asigns may be decreed to repay to the plaintiff all taxes which he has paid on said lands, and interest thereon.

And that said Des Moines Valley Railroad Company be decreed to release to the plaintiffs all claim to the indemnity lands set apart to the plaintiffs, and for such other relief as the nature of the plaintiff's case may require.

GRANT & SMITH,
Attorneys for Plaintiff.

STATE OF IOWA, *Scott County:*

I, James Grant, being duly sworn, depose on oath that I am one of the attorneys for the plaintiff; that the facts stated in the foregoing petition are all of them of record, except the allegations of the interest and intent of the parties in the suit of Walcott v. Des Moines
49 Navigation Company. I have examined the records referred to in the bill, and have been informed as to facts about the Walcott suit by parties who appeared to know them, and I believe the allegations of the bill to be true.

JAMES GRANT.

Sworn to and subscribed before me this [1st] day of October, 1868.
[SEAL.] JOHN F. DILLON,
Judge of the Supreme Court, Iowa.

50 EXHIBIT I.

EXECUTIVE OFFICE,
Des Moines City, Iowa, March, 1860.

STATE OF IOWA, *sct:*

In pursuance of the provisions of the 4th section of the act of Congress, approved May 15th, 1856, entitled "An act making a grant of land to the State of Iowa, in alternate sections, to aid in the construction of certain railroads in said State," I, Samuel J. Kirkwood, governor of the State of Iowa, do hereby certify that the construction of the par-

ticular twenty miles from the city of Dubuque, exhib'ted on the annexed map, has been completed according to law, being the fourth twenty continuous miles of said road.

In testimony whereof I have hereunto set my hand and caused to be hereto affixed the great seal of the State of Iowa the day and year above written.

[L. S.] (Signed) SAMUEL J. KIKWOOD.

By the governor:
(Signed) ELIJAH SELLS,
Secretary of State.

EXECUTIVE OFFICE,
Des Moines City, Iowa, April 25, 1861.

STATE OF IOWA, *sct:*

In pursuance of the provisions of the 4th section of the act of Congress, approved May 15th, 1856, entitled "An act making a grant of land to the State of Iowa, in alternate sections, to aid in the construction of certain railroads in said State," I, Samuel J. Kirkwood, governor of the State of Iowa, do hereby certify that the construction of the particular twenty miles from the city of Dubuque, of the Dubuque & Sioux
51 City Railroad, exhibited on the annexed map, has been completed according to law, being the fifth twenty miles continuous of said road.

In testimony whereof I have hereunto set my hand and caused to be hereto affixed the great seal of the State of Iowa the day and year above written.

[L. S.] (Signed) SAMUEL J. KIRKWOOD.
(Signed) ELIJAH SELLS,
Secretary of State.

EXECUTIVE OFFICE,
Des Moines City, July 29, 1855.

In pursuance of the provisions of the 4th section of the act of Congress, approved May 15th, 1856, entitled "An act making a grant of land to the State of Iowa, in alternate sections, to aid in the construction of certain railroads in said State," and of the 8th section of the act of June 2, 1864, amendatory thereof, I, William M. Stone, governor of the State of Iowa, do hereby certify that, on the 2d of June, 1864, and for nearly six months thereafter, the westerly terminus of the completed portion of the Dubuque & Sioux City Railroad was the east bank of the Cedar River, in sec. 12, T. 89 N., R. 14 west; and that the twenty miles of road next westerly thereof, as shown on the annexed map, being the sixth consecutive twenty miles from the city of Dubuque were completed and ready for the rolling-stock, within one year from the first day of July, 1864.

In testimony whereof I have hereunto set my hand and caused to be hereto affixed the great seal of the State of Iowa the day first above written.

[L. S.] (Signed) W. M. STONE.

By the governor:
(Signed) JAMES WRIGHT,
Secretary of State.

Copy of clear lists of Des Moines River lands.

GENERAL LAND OFFICE, *April* 11, 1863.

I, J. M. Ed*ward*s, Commissioner of the General Land Office, do
52 hereby certify that the annexed pages, one to five inclusive, is a true and literal exemplification of the original approved list on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[L. S.] (Signed) J. M. ED*WARD*S,
Commissioner of the General Land Office.

53 *The Dubuque & Sioux City (late Dubuque & Pacific) Railroad, supplemental list of lands in the district, of lands subject to sale at Fort Dodge, within the six-mile limits, granted to the State of Iowa by act of Congress, approved 15th May, 1856, entitled "An act for making a grant of lands to the State of Iowa in alternate sections, to aid in the construction of certain railroads in said State," being the vacant and unappropriated lands in the alternate sections designated by odd numbers, for six sections in width on each side of the railroad, "from the city of Dubuque to a point on the Missouri River near Sioux City, with a branch from the mouth of the Tete des Morts to the nearest point on said road."*

North of base line and west of the fifth principal meridian, Iowa. The Dubuque & Sioux City Railroad list. Fort Dodge district. Six-mile limits.

Number.	Part of section.	Section.	Township.	Range.	Acres.	Remarks.
1	N. h'f	31	88	26	290. 49	
2	S. W. q'r of S. W. q'r	29	88	26	40	
3	W. h'f of S. W. q'r, and S. W. q'r of N. W. q'r	3	88	27	120	
4	All	5	88	27	701. 30	
5	All	7	88	27	598. 86	
6	All	9	88	27	640	
7	W. h'f, and W. h'f N. E. q'r, and W. h'f S. E. q'r	15	88	27	480	
8	All	17	88	27	640	
9	All	19	88	27	599. 10	
10	All	21	88	27	640	
11	S. h'f, S. h'f N. E. q'r, and S. h'f N. W. q'r	23	88	27	480	
12	All	25	88	27	640	
13	N. h'f N. W. q'r, S. E. q'r, N. h'f S. W. q'r, and S. W. q'r S. W. q'r	27	88	27	480	
14	All	29	88	27	640	
15	E. h'f N. E. q'r, and W. h'f N. W. q'r	31	88	27	141. 92	
16	N. h'f	33	88	27	320	
17	N. h'f	35	88	27	320	
18	W. h'f, W. h'f N. E. q'r, and S. E. q'r	19	89	27	583. 92	
19	S. h'f, S. W. q'r	21	89	27	80	
20	S. h'f N. W. q'r, and S. W. q'r	27	89	27	240	
21	W. h'f S. E. q'r, and S. E. q'r S. E. q'r	27	89	27	120	
22	All	29	89	27	640	
23	All	31	89	27	663. 72	
24	All	33	89	27	640	
25	W. h'f N. W. q'r, and S. E. q'r N. W. q'r	35	89	27	120	
26	W. h'f, S. E. q'r and S. W. q'r	35	89	27	240	
27	All	1	88	28	709. 10	
28	All	3	88	28	719. 64	
29	N. h'f and lot 4	5	88	28	439. 87	
30	S. q'r	7	88	28	160	
31	All	9	88	28	640	
32	S. h'f N. W. q'r, and S. W. q'r	11	88	28	240	
33	N. h'f and S. E. q'r	13	88	28	480	
34	All	15	88	29	599. 68	
35	N. h'f and S. E. q'r, E. h'f S. W. q'r	17	88	28	510. 55	
36	S. h'f and N. W. q'r, W. h'f N. E. q'r	19	88	28	541. 88	
37	N. h'f	21	88	28	320	
38	All	23	88	28	619. 88	
54						
39	W. h'f	25	88	28	320	
40	All	27	88	28	616. 88	
41	All	29	88	28	640	
42	N. h'f	31	88	28	309. 57	
43	N. h'f	35	88	28	299. 19	
44	W. h'f	1	89	28	294. 03	
45	S. W. q'r N. E. q'r, and W. h'f S. E. q'r	1	89	22	120	
46	All	3	89	28	589. 02	

Number.	Part of section.	Section.	Township.	Range.	Acres.	Remarks.
47	All	5	89	28	606.16	
48	Lots 1, 2, 3, 4, 5, 6, and N. E. q'r of N. E. q'r	7	89	28	312.99	
49	Lots 7, 8, 9, 10, 11, and S. h'f S. W. q'r	7	89	28	285.94	
50	All	9	89	28	640	
51	All	11	89	28	640	
52	W. h'f, and W. h'f N. E. q'r	13	89	28	400	
53	W. h'f S. E. q'r, and S. E. q'r S. E. q'r	13	89	28	120	
54	All	15	89	28	640	
55	All	17	89	28	640	
56	Lots 1, 2, 3, 4, N. E. q'r, and E. hlf S. E. q'r	19	89	28	446.84	
57	Lots 5, 6, 7, 8, and 9	19	89	28	119.91	
58	All	21	89	28	640	
59	All	23	89	28	640	
60	All	25	89	28	640	
61	All	27	89	28	640	
62	Lots 2 and 3	29	89	28	78.61	
63	N. E. q'r	29	89	28	160	
64	Lot 4	29	89	28	57.70	
65	Fr'l E. of river	31	89	28	1.41	
66	Fr'l W. of river	31	89	28	655.93	
67	All	33	89	28	640	
68	All	35	89	28	640	
69	S. h'f	19	90	28	320.03	
70	S. W. q'r	21	90	28	160	
71	W. h'f and S. E. q'r	27	90	28	480	
72	All	29	90	28	640	
73	Lots 1, 2, 3, 4, & E. h'f, (or fr. E. of river)	31	90	28	490.27	
74	Lots 5 and 6, (or fr. W. of river)	31	90	28	96.97	
75	All	33	90	28	640	
76	W. h'f and S. E. q'r	35	90	28	480	
77	All	1	88	29	688.39	
78	All	3	88	29	727.92	
79	All	5	88	29	733.08	
80	All	7	88	29	612.48	
81	All	9	88	29	640	
82	All	11	88	29	640	
83	All	13	88	29	640	
84	All	15	88	29	640	
85	All	17	88	29	640	
86	All	21	88	29	640	
87	All	23	88	29	640	
88	All	25	88	29	640	
89	All	27	88	29	640	
90	N. h'f N. E. q'r	29	88	29	80	
91	N. h'f	35	88	29	320	
92	Lots 1, 2, 3, and S. E. q'r S. E. q'r	1	89	29	149.10	
93	Lots 4, 5, 6, 7, 8, & N. W. q'r, W. h'f S. W. q'r	1	89	29	452.83	
94	All	3	89	29	627.90	
95	All	5	89	29	611.26	
96	E. h'f	7	89	29	320	
97	All	9	89	29	640	
98	All	11	89	29	640	
99	All	13	89	29	640	
100	All	15	89	29	640	
101	All	17	89	29	640	
102	N. E. q'r N. E. q'r	19	89	29	40	
103	All	21	89	29	640	
55						
104	W. h'f and S. E. q'r	23	89	29	480	
105	All	25	89	29	640	
106	All	27	89	29	640	
107	E. h'f	29	89	29	320	
108	All	33	89	29	640	
109	All	35	89	29	640	
110	W. h'f and S. E. q'r	19	90	29	479.84	
111	S. h'f	21	90	29	320	
112	S. h'f	23	90	29	316.55	
113	Lots 1 and 2, east of river	25	90	29	73.88	
114	Lots 3, 4, 5, 6, w. h'f, S. E. q'r S. W. q'r	25	90	29	402.98	
115	W. h'f N. W. q'r, and S. E. q'r N. W. q'r	25	90	29	120	
116	All	27	90	29	640	
117	All	29	90	29	640	
118	E. h'f, and E. h'f N. W. q'r, and E. h'f S. W. q'r	31	90	29	480	
119	All	33	90	29	640	
120	E. h'f N. E. q'r, and E. h'f S. E. q'r	1	89	30	186.62	
121	All	35	90	29	640	
	Total number of acres	...	...	...	56,473.32	

Making in the aggregate fifty-six thousand four hundred and seventy-three acres and thirty-two hundredths of an acre, within the six-mile limits.

GENERAL LAND OFFICE, *Feb.* 26, 1863.

I, J. M. Edwards, Commissioner of the General Land Office, do hereby certify that the foregoing on pages one to four inclusive, is a true and correct list of the tracts of land within the six-mile limits, granted to the State of Iowa, by the act of Congress, approved the 15th of May, 1856, entitled "An act making a grant of lands to the State of Iowa in alternate sections to aid in the construction of certain railroads in said State," being the vacant and unappropriated lands in the alternate sections designated by odd numbers for six sections in width on each side of the railroad, "from the city of Dubuque to a point on the Missouri River near Sioux City, with a branch from the mouth of the Tete des Mortes to the nearest point on said road," known as the Dubuque & Sioux City (late Dubuque & Pacific) Railroad," within the State of Iowa, and they are now submitted for the approval of the Secretary of the Interior, in accordance with the requirements of said act of the 15th of May, 1856, subject to all its conditions, and to any
56 valid interfering rights which may exist to any of the tracts embraced in the foregoing list.

In testimony whereof I have hereunto subscribed my name and caused the seal of the General Land Office to be affixed at the city of Washington, on the day and year first-above written.

[L. S.] (Signed) J. M. EDWARDS,
Commissioner.

DEPARTMENT OF THE INTERIOR,
April 7th, 1863.

Approved subject to the conditions and rights above mentioned.
(Signed) J. P. USHER,
Secretary.

GENERAL LAND OFFICE,
April 11th, 1863.

I, J. M. Edwards, Commissioner of the General Land Office, do hereby certify that the annexed pages, one to three inclusive, is a true and literal exemplification of the original approved list on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed at the city of Washington, on the day and year above-written.

[L. S.] (Signed) J. M. EDWARDS,
Commissioner of the General Land Office.

57 *The Dubuque & Sioux City (late Dubuque & Pacific) Railroad supplemental list of lands in the district of lands subject to sale at Fort Dodge, outside of the six and within the fifteen mile limits of the reserve, to satisfy the grant made to the State of Iowa, by the act of Congress approved the 15th of May, 1856, entitled "An act making a grant of lands to the State of Iowa, in alternate sections, to aid in the construction of certain railroads in said State," being the lands selected by the agent of the governor of the State of Iowa from the lands of the United States, in alternate sections and parts of sections, designated by odd numbers, nearest to the tiers of sections within six sections in width on each side of the railroad "from the city of Dubuque to a point on the Missouri River near Sioux City, with a branch from the mouth of the Tete des Mortes, to the nearest point on said road," and in lieu of the lands in the alternate sections designated by odd numbers within said six sections in width which the United States has legally "sold or otherwise appropriated, or to which the right of pre-emption have attached."*

North of base line and west of the fifth principal meridian, Iowa. The Dubuque and Sioux City Railroad list. Fort Dodge district. 15-mile limits.

Number.	Parts of section.	Section.	Township.	Range.	Acres.	Remarks.
1	E. h'f N. W. q'r & E. h'f S. W. q'r	5	87	26	583.98	
2	S. h'f	9	87	26	320	
3	S. h'f	31	88	26	290.19	
4	N. h'f and E. h'f S. E. q'r	1	87	27	426.44	
5	All	3	87	27	673.90	
6	All	5	87	27	681.60	
7	W. h'f and S. E, q'r	7	87	27	444.30	
8	S. h'f	9	87	27	320	
9	W. h'f	11	87	27	320	
10	S. W. q'r	31	88	27	143.36	
11	S. h'f	33	88	27	320	
12	N. h'f S. E. q'r and N. h'f N. W. q'r	35	88	27	160	
13	All	1	87	28	622.58	
14	W. h'f and N. E. q'r	3	87	28	518.28	
15	All	5	87	28	673.98	
16	All	7	87	28	621.98	
17	All	9	87	28	640	
18	W. h'f and S. E. q'r	11	87	28	480	
19	S. h'f	31	88	27	309.51	
20	S. W. q'r	33	88	27	160	
21	Lots 3, 4, 5, 6, & W. h'f S. W. q'r, & N. E. q'r S. E. q'r	35	88	27	294.06	
22	All	7	90	28	640.54	
23	All	9	90	28	640	
24	S. h'f	11	90	28	320	
25	W. h'f N. W. q'r	13	90	28	80	
26	All	15	90	28	640	
27	All	17	90	28	640	
28	N. h'f	19	90	28	320.10	
29	E. h'f and N. W. q'r	21	90	28	480	
30	All	23	90	28	640	
31	W. h'f S. W. q'r and S. W. q'r N. W. q'r	25	90	28	120	
32	N. E. q'r	27	90	28	160	
33	N. E. q'r	35	90	28	160	
34	All	1	87	29	668.12	
35	N. E. q'r N. E. q'r	3	87	29	44.42	
36	S. h'f	35	88	29	320	
37	Lot 1, (E. of river.)	1	90	29	4.15	
58						
38	All W. of river	1	90	29	630.10	
39	All	3	90	29	481.81	
40	E. h'f, and S. h'f N. W. q'r, and S. W. q'r	5	90	29	552.39	
41	E. h'f, and E. h'f N. W. q'r	7	90	29	400	
42	E. h'f, S. W. q'r and S. W. q'r S. W. q'r	7	90	29	120.78	
43	All	9	90	29	640	
44	All	11	90	29	640	
45	Lots 1, 2, 3, 4, S. E. q'r & S. E. q'r N, E. q'r	13	90	29	406.90	
46	Lots 5, 6, 7, and N. W. q'r N. W. q'r	13	90	29	189.14	
47	All	15	90	29	640	
48	All	17	90	29	640	
49	N. E. q'r	19	90	29	160	
50	N. h'f	21	90	29	320	
51	N. h'f	23	90	29	319.30	
52	S. E. h'f S. E. q'r	35	91	29	40	
	Total number of acres	----	----	----	21,061.91	

Making in the aggregate twenty-one thousand and sixty-one acres and ninety-one hundre'ths of an acre, between the six and fifteen mile limits.

GENERAL LAND OFFICE, *Feb. 26th*, 1863.

I, J. M. Edwards, Commissioner of the General Land Office, do hereby certify that the foregoing, on pages one to two inclusive, is a true and correct list of the tracts of land selected by the agent of the State of Iowa, outside of the six and within the fifteen mile limits under the act of Congress, approved the 15th of May, 1856, entitled "An act making a grant of lands to the State of Iowa, in alternate sections, to aid in the construction of certain railroads in said State," the said selections being from the lands of the United States in the alternate sections designated by odd numbers most contiguous to the tiers of sections within six sections in width on each side of the railroad, "from the city of Dubuque, to a point on the Missouri River, near Sioux City, with a branch from the mouth of the Tete des Mortes, to the nearest point on said road," and being in lieu of the lands in the alternate sections, designated by the odd numbers, within said six sections in width, on each side of said road, which the United States had legally sold, or to which the right of pre-emption had legally attached prior to the period at which the rights of the State inured under said grant, and they
59 are now submitted for the approval of the Secretary of the Interior, in accordance with the requirements of said act of the 15th of May, 1856, subject to all its conditions, and to any valid interfereing rights which may exist to any of the tracts embraced in the foregoing list.

In testimony whereof I have hereunto subscribed my name and caused the seal of the General Land Office to be affixed at the city of Washington, on the day and year first hereinabove written.

[L. S.] (Signed) J. M. EDWARDS,
Commissioner.

DEPARTMENT OF THE INTERIOR,
April 7th, 1863.

Approved, subject to the conditions and rights above mentioned.
(Signed) J. P. USHER,
Secretary.

NOTE.—The originals of the above two lists sent to W. W. Hamilton, at Des Moines, Iowa, by the American Express, on the 20th of February, 1864, by order of Platt Smith, vice president.

60 EXHIBIT II.—*Deed No.* 215.

Know all men by these presents that the Dubuque & Sioux City Railroad Company, in consideration of one hundred and seven thousand dollars, received by them of George J. Forrest, Frederick C. Gebhard, and William J. Barney, trustees, have bargained and sold, and by these presents do bargain, sell, and convey unto the said George J. Forrest, Frederick C. Gebhard, (both of the city of New York,) and William J. Barney, (of the city of Chicago, Illinois,) trustees as aforesaid, their heirs, and assigns, and other legal representatives forever, the following-described lands, to wit:

Part of section.	Section.	Township north.	Range west.	Acres.
North fr'l h'f and S. E. q'r	5	87	26	503. 98
E. h'f of S. W	5	87	26	80
S. h'f	9	87	26	320
S. W. of S. W	29	88	26	40
All	31	88	26	580. 68
S. W. of S. E	7	89	26	40
N. W. fr'l of N. E. and N. E. fr'l of N. W	1	90	26	83. 77
S. W. fr'l of N. W	7	90	26	42. 55
S. W. fr'l of N. W	31	90	26	44. 25
S. W. of S. E. and S. E. of S. W	21	91	26	80
W. h'f of N. W	23	91	26	80
S. E. of S. W	25	91	26	40
E. h'f S. E. and the N. fr'l h'f	1	87	27	426. 44
All	3	87	27	673. 90
S. W	5	87	27	160
W. fr'l h'f and S. E. q'r	7	87	27	444. 30
S. h'f	9	87	27	320
W. h'f	11	87	27	320
S. W. of N. W. fr'l q'r, and W. h'f of S. W	3	88	27	120
All 5, 7, and	9	88	27	1, 940. 16
W. h'f of N. E. and W. h'f S. E	15	88	27	160
W. h'f	15	88	27	320
All 17, 19, and 21, except W. h'f of N. W. . of 17		88	27	1, 799. 10
S. h'f of N. E. and S. h'f of N. W	23	88	27	160
S. h'f	23	88	27	320
All	25	88	27	640
W. h'f of S. W. q'r, and the N. h'f	27	88	27	400
N. E. of S. W. and N. W. of S. E	27	88	27	80
All	29	88	27	640
E. h'f of N. E. and W. fr'l h'f N. W	31	88	27	141. 92
S. W. fr'l	31	88	27	143. 36
All	33	88	27	640. 36
61 N. h'f	35	88	27	320. 36
N. h'f of S. W. and N. h'f of S. E	35	88	27	160. 36
All	17	89	27	640. 36
W. h'f of N. E	19	89	27	80
W. fr'l h'f and S. E. q'r	19	89	27	503. 92
S. h'f of S. W	21	89	27	80
S. h'f of N. W. and S. W. q'r	27	89	27	240
W. h'f of S. E. and S. E. of S. E	27	89	27	120
All 29, 31, and	33	89	27	1, 943 72
W. h'f of N. W. and S. E. of N. W	35	89	27	120
W. h'f of S. E. and the S. W. q'r	35	89	27	240
N. fr'l h'f of N. W	3	90	27	72. 56
N. E. of N. E	9	90	27	40
W. h'f of N. W. and N. W. of S. W	11	90	27	120
Lots 1, 8, 9, and 10, and S. W. of N. W. fr'l	1	87	28	175. 35
Lots 4, 5, 6, and 7, and W. h'f of S. W	1	87	28	293. 84
N. fr'l h'f and S. W. q'r	3	87	28	518. 28
All 5, 7, and	9	87	28	1, 935. 96
W. h'f and S. E. q'r	11	87	28	480
All 1 and	3	88	28	1, 428. 74
N. fr'l h'f and lot 4	5	88	28	439. 87
S. E	7	88	28	160
All	9	88	28	640
S. h'f of N. W. and the S. W. q'r	11	88	28	240
E. h'f and N. W. q'r	13	88	28	480
All	15	88	28	599. 68
N. E. q'r and lots 1, 2, 3, 4, and 5	17	88	28	258. 50
Lots 6, 7, 8, 9, and 10	17	88	28	252. 05
W. h'f of N. E. and the N. W. fr'l q'r	19	88	28	231. 08
S. fr'l h'f	19	88	28	310. 50
N. h'f	21	88	28	320. 50
All	23	88	28	606. 68
W. h'f	25	88	28	320. 68
All	27	88	28	619. 88
All 29 and	31	88	28	1, 259. 08
S. W. q'r	33	88	28	160
All	35	88	28	593. 25
S. W. of N. E. q'r and the N. W. fr'l q'r	1	89	28	174. 03
W. h'f of S. E. and the S. W. q'r	1	89	28	240. 03
All 3, 5, and	7	89	28	1, 794. 11
N. h'f and S. E. q'r.* (See note on page 61)	9	89	28	240
All	11	89	28	640
W. h'f and W. h'f of N. E	13	89	28	400
W. h'f of S. E. and S. E. of S. E	13	89	28	120
All	15	89	28	640
N. E. q'r	17	89	28	160
E. h'f of S. E. and N. W. of S. E	17	89	28	120
N. E. of S. W. and S. E. of N. W	17	89	28	80
N. h'f of N. W	17	89	28	80
Lots 6, 7, 8, and 9, and all of 5 south Lizard River	19	89	28	88. 74

Part of section.	Section.	Township north.	Range west.	Acres.
E. h'f and S. W. q'r	21	89	28	480
All 23, 25, and	27	89	28	1,920
N. E. q'r	29	89	28	160
All	31	89	28	657.34
S. h'f and N. E. q'r	33	89	28	480
All	35	89	28	640
E. fr'l h'f of N. E	1	90	28	76.99
All 7 and	9	90	28	1,280.54
S. h'f	11	90	28	320
N. E. of S. W. and the S. E. q'r	13	90	28	200
W. h'f of N. W	13	90	28	80
All 15, 17, 19, 21, and	23	90	28	3,200 13
N. E. of S. E	25	90	28	40
S. W. of N. W. and W. h'f S. W	25	90	28	120
All 27, 29, 31, 33, and	35	90	28	3,147.24
E. fr'l h'f of N. E. and N. W. fr'l of N. E	3	86	29	110.22
N. W. of N. W	9	86	29	40
All	1	87	29	668.12
62 N. E. fr'l of N. E	3	87	29	44.42
N. W. of N. W. and S. E. of N. W	9	87	29	80
S. W. of S. W. and E. h'f of S. W	9	87	29	120
N. W. of S. E	9	87	29	40
E. h'f of N. W. and S. W. of N. W	23	87	29	120
S. E. of N. E. and W. h'f of N. E	29	87	29	120
N. W. q'r and W. h'f of S. W	29	87	29	240
S. E. q'r	29	87	29	160
All except S. E. of S. E	31	87	29	585.60
All except W. h'f of N. W	33	87	29	560
Lot 1 and N. E. fr'l of N. E	1	88	29	94.45
Lots 7 and 8 and S. E. of S. E	1	88	29	102.13
W. h'f of S. E. and W. h'f of S. W	1	88	29	160
All 3, 5, 7, 9, 11, and	13	88	29	3,993.48
All 15, 17, 21, 23, 25, and (except N. E. q'r of N. E. q'r of 23)	27	88	29	3,800
N. h'f of N. E	29	88	29	80
All	35	88	29	640
All 1, 3, and	5	89	29	1,841.08
E. h'f	7	89	29	320
All 9 and	11	89	29	1,280
N. E. q'r	13	89	29	160
W. h'f and S. E. q'r	15	89	29	480
All	17	89	29	640
N. fr'l h'f	19	89	29	328.88
All	21	89	29	640
W. h'f and S. E. q'r	23	89	29	480
W. h'f and S. E. q'r	25	89	29	480
All	27	89	29	640
E. h'f	29	89	29	320
All 33 and	35	89	29	1,280
All 1 and	3	90	29	1,116.06
E. fr'l h'f	5	90	29	312.39
S. h'f of N. W. fr'l and the S. W. q'r	5	90	29	240
All 7, 9, 11, 13, and	15	90	29	3,159.66
All 17, 19, 21, 23, and	25	90	29	3,152.19
All 27, 29, 31, 33, and	35	90	29	3,204.24
W. h'f of Z. W	29	91	29	80
S. E. of S. E	35	91	29	40
S. E. q'r	15	87	30	160
S. E. of S. W	25	87	30	40
S. of N. W	27	87	30	40
S. h'f of N. E	31	87	30	80
E. h'f N. W. fr'l and S. W. fr'l of N. W	31	87	30	119.15
N. fr'l h'f of S. W	31	87	30	79.25
W. h'f of S. E. and N. E. of S. E	31	87	30	120
N. h'f	33	87	30	320
W. h'f of S. W. and N. E. of S. W	33	87	30	120
N. W. of S. E. and S. E. of S. E	33	87	30	80
W. h'f of S. W. and N. E. of S. W	35	87	30	120
N. W. of S. E	35	87	30	40
E. fr'l h'f of N. E. and E. h'f S. E	1	88	30	186.62
N. W. of S. W	11	88	30	40
N. E. of N. E	23	88	30	40
N. W. of S. E	27	88	30	40
E. h'f of S. E	1	89	30	80
N. E. q'r	7	89	30	160
S. W. of N. W. q'r and the S. h'f	11	89	30	360
S. W. of S. W. and E. h'f of S. W	15	89	30	120
N. h'f	17	89	30	320
W. h'f of N. E	19	89	30	80
W. h'f	25	89	30	320
S. h'f of N. W. fr'l and N. W. of S. W	3	90	30	120
E. h'f of S. W. q'r and the S. E. q'r	3	90	30	240
S. E. q'r	19	90	30	160

	Part of section.	Section.	Township north.	Range west.	Acres.
	E. h'f of N. E. and E. h'f of S. E	21	90	30	160
	All	33	90	30	640
	All	1	87	31	667. 24
	S. W. q'r	5	87	31	160
	All	7	87	31	623. 84
63	All 13, 15, 17, and	19	87	31	2, 542. 14
	All 21, 23, and	25	87	31	1, 920
	N. h'f	27	87	31	320
	N. h'f	35	87	31	320
	S. E. q'r and W. fr'l h'f	3	90	31	475
	All 5 and	7	90	31	1, 284. 47
	W. h'f	11	90	31	320
	All 15, 21, and	29	90	31	1, 920
	S. W. q'r	25	90	31	160
	W. fr'l h'f and S. W. of S. E	31	91	31	359. 64
	All 21, 23, 27, 29, and	33	91	31	3, 039. 50
	All 19, 25, 27, and	29	92	31	2, 551. 04
	All 31, 33, and	35	92	31	1, 919. 20
	All	1	87	32	681. 94
	E. fr'l h'f and S. W. q'r	3	87	32	506. 84
	All	5	87	32	696. 18
	N. fr'l h'f	7	87	32	298. 74
	All 9, 11, 13, and	15	87	32	2, 560. 74
	Lot 2, 48. 55 acres † Lot 3, 40 acres †	5	88	32	328. 55
	All	27	88	32	640
	Total				106, 998. 73

* 41st line on page 61, 240 acres too little. } These balance each other.
† 19th line on page 63, 240 acres too much. }

Reserving to said railroad company the right of way across said lands, with full right to locate said railroad thereon; to borrow earth, stone, or gravel for construction, and to deposit waste earth thereon when necessary.

To have and to hold the said lands to the said George J. Forrest, Frederick C. Gebhard, and William J. Barney, trustees, their heirs, assigns, and other legal representatives, in fee-simple, absolute, forever.

The said railroad company will warrant and defend said premises to said grantees, their heirs, assigns, and other legal representatives against the lawful claims of all persons whomsoever.

In testimony the president and secretary of said company sign their names this twelfth day of November, 1863, and the corporate seal is hereto affixed.

[SEAL.] (Signed) EDWARD STIMSON, *President.*

JAMES M. MCKINLAY, *Secretary.*

[Revenue stamps.]

64 STATE OF IOWA, *Dubuque County:*

On this 14th day of November, 1863, before me, a notary public of Iowa, in and for said county, in person came Edward Stimson and James M. McKinlay, who are personally known to me to be the identical persons whose names are affixed to the foregoing deed, as executing the same for the Dubuque & Sioux City Railroad Company, and they acknowledged that they voluntarily executed the same as the voluntary act and deed of said company.

Witness my hand and notarial seal.

(Signed) GEO. P. LAWRENCE, *N. P.*

Endorsements.

Dubuque & Sioux City Railroad Company to George J. Forrest, Frederick C. Gebhard, and W'm J. Barney, trustees, 106,998.73 acres of land in Webster, Hamilton, Wright, Humboldt, Pocahontas, and Calhoun counties, Iowa.

STATE OF IOWA, *Webster County, ss:*

Received and filed for record this 28th day of December, A. D. 1863, at 9 o'clock a. m., and recorded in deed-book E pages 428, 429, and 430.

(Signed) J. GARMORE, *Recorder.*

Fees, $5; paid.

STATE OF IOWA, *Hamilton County, ss:*

Received and filed for record this May 5, A. D. 1864, at 3 o'clock p. m., and recorded in book 3 of deeds, on pages 568, 569, 570, 571, and 572,

(Signed) J. M. BELL, *Recorder.*

Fees paid, $5.

STATE OF IOWA, *Calhoun County, ss:*

Received for record April 7th, 1864, at 5 o'clock p. m., and recorded in book B of deeds, pages 384, 385, 386, and 387.

(Signed) CHARLES AUNS, *Recorder.*

Fees, $5; paid.

65 STATE OF IOWA, *Wright County, ss:*

Filed for record May 26th, A. D. 1864, at 8 o'clock a. m., and recorded in vol. 5, pages 371, '72, '73, '74, and '75.

(Signed) R. K. EASTMAN, *Recorder.*

Fees, $5; paid.

STATE OF IOWA, *Pocahontas County, ss:*

Filed for record this 16th day of June, A. D. 1864, at 9 o'clock, a. m. and recorded in deed-book B, pages 105, 106, and 107.

(Signed) MICHAEL COLLINS, *Recorder.*

Fees paid, $5 00.

STATE OF IOWA, *Humboldt County, ss:*

Filed for record the 2d day of July, A. D. 1864, at 10 o'clock a. m., Recorded in book A of deeds, pages 499, 500, 501, and 502.

(Signed) CHA'S BERGK, *Recorder.*

Fees, $5; paid.

66

EXHIBIT III.

List of lands deeded to I. H. Co. by Dubuque & Sioux City Railroad Company, Nov. 12th, 1863, which are included in the deed from State of Iowa to Des Moines Navigation & Railroad Company, dated May 3, 1858.

Parts of sections.	Section.	Township north.	Range west.	Acres.
WEBSTER COUNTY.				
E. h'f of S. E., N. fr'l h'f N. E., and N. fr'l h'f N. W.	1	87	27	266. 44
All of 3 and S. W q'r of	5	87	27	833. 90
W. fr'l h'f and S. E. q'r of 7, and S. h'f of	9	87	27	763. 30
N. h'f of N. W. and E. h'f S. W.	11	87	27	160
S. W. of N. W. fr'l q'r and W. h'f S. W.	3	88	27	120
All of 5, 7, and 9 and W. h'f	15	88	27	2, 260. 16
W. h'f of N. E. and W. h'f of S. E.	15	88	27	160
All of 17, 19, and 21, (except W. h'f N. W. 17)	21	88	27	1, 799. 10
S. h'f of N. E., S. h'f of N. W. and S. h'f	23	88	27	480
All of 25, and S. W. S. W., and S. h'f of N. E.	27	88	27	760
N. W. of S. E. 27 and all 29 and	33	88	27	1, 320
E. h'f of N. E. and N. h'f of S. W	31	88	27	151. 68
S. W. of S. W. of 31 and S. h'f of N. E.	35	88	27	111. 68
N. h'f S. E.	35	88	27	80
W. h'f N. E. and W. fr'l h'f and S. E. q'r	19	89	27	582. 92
S. h'f of S. W. of 21 and S. h'f N. W	27	89	27	160
W. h'f S. E. and S. E. of S. E. and S. W. q'r	27	89	27	280
All of 29, 31, and	33	89	27	1, 943. 72
W. h'f of N. W. and N. E. of W. W.	35	89	27	120
W. h'f of S. E. and S. W. q'r of	35	89	27	240
Lots 1, 9, and 10	1	87	28	82
Lots 4, 5 6, and 7, and W. h'f S. W.	1	87	28	293. 14
N. fr'l h'f and S. W. of 3, and all of 5, 7, and	9	87	28	2, 454. 24
W. h'f of S. E. q'r of	11	87	28	480
All of 1 and N. h'f of	3	88	28	1, 108. 74
N. fr'l h'f of 5, and S. E. q'r of	7	88	28	561. 44
S. h'f of 9, and S. W. q'r of	11	88	28	488
E. h'f and N. W. q'r	13	88	28	480
Lot 7, and S. W. of S. E., and S. h'f of S. W. of	15	88	28	165. 55
N. W. of N. W.	15	88	28	40
N. E. q'r of 17 and S. fr'l h'f of	19	88	28	470. 50
W. h'f of N. E. and N. W. fr'l q'r	19	88	28	231. 08
E. h'f of N. W. and N. E. q'r of 21, and lots 1, 2, 3, 5, 6, 7	23	88	28	448. 92
N. h'f of S. E. and S. E. of N. E. of	23	88	28	120
E. h'f of S. W. of 25 and S. h'f of	27	88	28	400
Lots 2 and 3, and N. W. fr'l q'r of	27	88	28	267. 28
All of 29 and 31 and S. W. of	33	88	28	1, 419. 08
W. h'f N. E., S. E. q'r, and W. h'f of	35	88	28	513. 25
S. W. of N. E. fr'l q'r and N. W. q'r of	1	89	28	174. 43
W. h'f of S. E. and S. W. q'r of	1	89	28	240
All of 3, 5, 11, 15, 23, 25, and	27	89	28	4, 395. 18
N. E. of N. E. and lots 1, 2, 3, 4, 5, and 6 of	7	89	28	312. 99
N. h'f and S. E. q'r of 9, and W. h'f of	13	89	28	800
W. h'f of N. E., W. h'f of S. E., and S. E. of S. E.	13	89	28	200
E. h'f S. E., N. W. of S. E. and N. E. q'r	17	89	28	280
67 N. E. of S. W., S. E. of N. W., and N. E. of N. W	17	89	28	120
E. h'f of S. W. of 21, and S. h'f N. E.	29	89	28	560
S. h'f of N. E. q'r of 33, and all of	35	89	28	1, 120
E. h'f of	7	91	28	-----
N. W. fr'l q'r and E. h'f of S. W., and N. W. of S. W.	7	90	28	280. 89
All of 9, and S. h'f	11	90	28	960
W. h'f of N. W. of 13, and all of 15, 17, 19, 21, and	23	90	28	3, 280. 13
S. W. of N. W. and W. h'f of S W.	25	90	28	129
All of 27, 29. 33, 35, and E. h'f, and lots 1, 2, 3, and 4 of	31	90	28	3, 150. 27
All of 1, N. E. of N. E. of	3	87	29	712. 54
Lot 1 and N. E. of N. E. of	1	88	29	94. 45
N. W. of S. E. and W. h'f S. W.	1	88	29	120
All of 3, 5, 7, 9, 11, 13, 15, 17, and	21	88	29	5, 913. 48
All (except N. E. of N. E.) of 23, all of 25, and	27	88	29	1, 880
N. E. of N. E. and N. W. of N. E. of 29 and all of	35	88	29	720
Lots 1, 2, and 3, and S. E. of S. E. of	1	89	29	149. 10
Lot 1 of	1	90	29	4. 15
Lots 1 and 2 and S. E. of N. E.	13	90	29	132. 29
Lots 1 and 2	25	90	29	73. 88
E. h'f N. E. and E. h'f S. E.	1	88	30	189. 56
HAMILTON COUNTY.				
All (except W. h'f S. W.)	5	87	26	583. 98
S. h'f of	9	87	26	320
S. W. of S. W. 29 and all of	31	88	26	620. 68
Total				50, 013. 92

Endorsement.

Showing lands in deed from State of Iowa to Des Moines Navigation & Railroad Company, dated May 3d, 1868, 50,013.92 acres.

MEM.

Claimed by navigation company	50,013.92 acres.
Kilburn and others, for Des Moines Valley Road	20,886.45 "
Total	70,900.37 "
Total claim against purchase of	107,000.00 "
Leaving balance, title not yet disputed	36,100.00

68 EXHIBIT IV.

List of lands within 5 miles of Des Moines River not included in deed from State of Iowa to Des Moines Navigation & Railroad Company, May 3d, 1858, lying on west side of river.

Parts of section.	Section.	Township north.	Range west.	Acres.
HUMBOLDT COUNTY.				
W. h'f of S. W. of 29 and S. E. of S. E. of	35	91	27	120
WEBSTER COUNTY.				
Lots 7, 8, 9, 10, and 11, and S. h'f S. W	7	89	28	285. 94
Lots 6, 7, 8, 9, and all of 5 south of Lizzard River	19	89	28	88. 74
All of	31	89	28	657. 34
E. h'f N. E.	1	90	28	76. 99
N. E. of N. E. of 25 and lots 5 and 6 of	31	90	28	136. 97
N. E. of S. W. and S. E. q'r of	13	90	28	240
All (except S. E. of S. E., and lots 1, 2, and 3) of	1	89	29	452. 82
All of 3, 5, 9, 11, 17, 21 and	27	89	29	4, 439. 16
E. h'f 7 and N. E. *h'f* of	13	89	29	480
W. h'f *of* S. E. q'r of 15 and N. fr'l h'f of	19	89	29	800. 88
W. h'f of	23	89	29	320
W. h'f *of* S. E. q'r of 25 and E. h'f of	29	89	29	800
All of 33 and	35	89	29	1, 280
All (except lot 1)	1	90	27	630. 10
E. h'f, and S. h'f N. W. and S. W. q'r	5	90	27	552. 39
All of 3, 7, 9 and	11	90	27	2, 405. 43
All (except lots 1, 2, 3, 4 and S. E. of N. E. and S. E. q'r)	13	90	27	189. 14
All 15, 17, 19, 21, 23 and except lots 1 and 2	25	90	27	3, 718. 31
All 27, 29, 31, 33 and	35	90	27	3, 204. 24
Total				20, 886. 45

69 EXHIBIT V.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
June 29, 1867.

E. C. LITCHFIELD, Esq., *New York City:*

SIR: Referring to my letter of the 12th inst., I have the honor to state that, upon careful examination of the decision of the U. S. Supreme Court at the December term, 1866, in the case of Walcott vs. Des Moines Navigation and Railroad Company, a printed copy of which was furnished with your letter of the 31st ult., I have come to a different conclusion from what you seem to have reached as to the extent of said decision. The main point ruled by the court was in relation to a specific tract

of land within the five-miles limits of what is known as the "Des Moine' River grant," above the Raccoon Forks, under the act of August 8th, 1846, as against the railroad grant under act of 15th May, 1856, and recognized title under the first-named grant.

The question did not come up before the court as to what rights, if any, could have been acquired by actual settlers under the pre-emption law subsequent to the rejection by said court in 1859, (23 How., 666,) of the Des Moine' River claim above the forks, and prior to the passage of the joint resolution by Congress, 2d March, 1861, and act of 12th July, 1862, in favor of bona fide purchasers from Iowa.

It is true the court expressed the opinion that, under the first-named or river grant of 1846, the odd-numbered sections within said limits above the forks were reserved, and that therefore title could not pass under the second or railroad grant of 1856. However this may be, it is held by this office that, after the rejection by the Supreme Court in 1859 of the Des Moines grant as to lands above the Raccoon Forks, and before the confirmation of said lands in favor of bona fide purchasers from the State, such reservation did not operate as a bar to the privileged class of persons known to our system as actual settlers under the pre-emption laws; and it is not understood upon what ground a claim under the Des Moines grant can now be set up to the tracts covered by actual settlement of pre-emption, when in the final adjustment of that grant, allowance for the benefit of said improvement claim has been fully given in other lands by way of indemnity, and accepted by the State accordingly.

Your request, therefore, that all pre-emption claims to lands within the limits indicated be rejected unless they had their inception prior to the original grant of 8th August, 1846, is hereby declined.

I am, very respectfully, your obedient servant,

JA'S S. WILSON,
Commissioner.

WASHINGTON, *July 2d*, 1867.

PLATT SMITH, Esq.:

I have just obtained and hereto annex a copy of the Commissioner's letter of the 29th ultimo, to E. C. Litchfield, as promised in my letter to you of 20th ult.

You will see the strong point he makes as to the indemnity lands accepted by the State as a final settlement under the law. The act of 1862, extending the river grant to the State line, and the action under it, was intended by all parties, Congress included, as a settlement of this whole matter. Can the State and her assignees first receive indemnity, and then claim and take the lands in lieu of which the indemnity was given, as now proposed under the recent decision of the court? This, too, upon paying a receipt in full? It seems to me perfectly absurd. And there was really no question open for the court to decide in view of all the facts. And, after all, if the railroads do not get their lands, they rightly belong to the United States. I inclose copy of the Commissioner's letter to me of 4th December, 1866, stating the fact officially that the State was indemnified in the adjustment of 1866 (before the decision.) I sent similar copy to Mr. McKinlay, with my letter of 9th Dec., 1866, for his files.

Yours truly,

W'M T. STEIGER.

71 DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE, *Dec.* 4, 1866.

SIR: In reply to your inquiry of the 1st inst., I have state that the lists of lands approved June 14, 1866, to the State of Iowa, under the Des Moines River grant of 12th of July, 1862, and joint resolution of March 2d, 1861, includes therein the lands to be held in trust as provided by said act.

Very resp'tf'y your ob't serv't,

JA'S S. WILSON,
Commissioner.

W'M T. STEIGER, Esq., present.

STATE OF IOWA, EXECUTIVE DEPARTMENT,
Des Moines, July 26, 1866.

Hon. J. M. EDMUNDS,
Commissioner Gen. Land Office, Washington, D. C.

SIR: In reply to your communication of the 19th inst., I have the honor, by direction of the governor, to re-enclose to you the report of settlement between Hon. Josiah A. Harvey and the United States, on Des Moines River and other lands, with the approval of the census board of this State, attested by the great seal of the State.

Very respectfully yours,

G. J. NORTH, *Priv. Sec.*

Adjustment of the Des Moines River grant under the act of July 12, 1862, *and joint resolution of March* 2*d*, 1861.

DEBIT.	Acres.	CREDIT.	Acres.
The State of Iowa with the quantity of indemnity lands selected under the special certificate dated April 25, 1863	297, 603. 74	The State of Iowa with the whole of the area of the grant above the Raccoon Forks	558, 004, 06
The lands in place to be certified	167, 109. 02		
The lands in place confirmed by joint resolution of March 2d, 1861	44, 838. 64		
The quantity selected on the east fork of the Des Moines River, and certified to the State under the original law of August 8th, 1846	11, 661. 80		
The excess selected and approved to the State under the 500,000 grant of 1841	35, 473. 54		
	556, 686. 74		
Remaining indemnity due to the State	1, 317. 32		
	558, 004. 06		558, 004. 06

J. M. EDMUNDS,
Com. Gen. Land Office.

GEN LAND OFFICE, *May* 21, 1866.

72 WASHINGTON CITY, *May* 23*d*, 1866.

To the honorable census board of the State of Iowa, Des Moines:

Pursuant to the requirements of chapter 79 of the acts of the 11th general assembly, I have the honor to report that I have consummated an adjustment with the United States of the excess of lands received by the State under the grant of Sept. 4th, 1841; also, the lands confirmed to the State by the joint resolution of March 2d, 1861, and the lands falling to the State under the act of Congress of July 12th, 1862; and transmit herewith for your approval a copy of the agreement containing the terms of said adjustment.

It will be observed that the State in this settlement is credited with the whole amount of land in odd sections lying within five miles of the Des Moines River, from the Raccoon Fork to the northern boundary of the State, determined (by the Department) to be 558,004.06 acres.

The State is then charged with the several quantities of land following, to wit:

		Acres.
1st.	Indemnity lands selected under special certificate dated April 28th, 1863	297,603.75
2d.	Remaining lands in place yet to be certified	167,109.02
3d.	Lands in place confirmed by joint resolution of March 2d, 1861	44,838.64
4th.	Lands selected and heretofore certified on the east fork of the Des Moines River, and more than five miles from the western or main branch	11,661.80
5th.	The excess selected and approved to the State as a part of the 500,000-acre grant under act of Sept. 4, 1841	35,473.54
	Making in all	556,686.74
	And leaving due the State to balance the whole amount of the grant	1,317.32

For which a special certificate will be issued.

The 11,661.80 acres on the east branch of the Des Moines River, heretofore approved to the State as a part of the Des Moines River grant, and disposed of by the State as such, are held by the Department, under the decision of the Attorney General, to be a proper and legitimate offset to so much of this grant. Hence they are charged to the State in this settlement.

The 35,475.54 acres charged as excess under the 500,000-acre
73 grant (act of 1841) include the 22,660.03 acres over and above the 500,000 acres which is embraced in the book of diagrams approved and certified to the State on the 12th of September, 1841, and which has hitherto been considered the "excess," and also the 12,813.51 acres which were once approved as a part of the 500,000-acre grant, and afterwards rejected and approved and certified as a part of the Des Moines River grant. These lands have been known as the "River school lands."

Notwithstanding that they have been disposed of by the State as a part of the Des Moines River lands, said chapter 79 requires that they shall be included and certified as a part *of* the grant of 1841. Deeming it my duty to carry out the provisions of the law, regardless of my personal opinion as to their correctness or pro*pro*priety, I have thus included these lands, thereby increasing said excess to 35,473.54 acres, and allowed them to be deducted from the amount of the Des Moines River grant due the State, as the Department has determined.

The proper and necessary lists according to the terms of this adjustment, will be made and approved by the Secretary, and delivered to me or sent to the State.

In the preparation of these lists, all the lands which appear at the General Land Office as having been selected as swamp under act of Sept. 28th, 1850, and all tracts to which pre-emption rights had attached prior to July 12th, 1862, will be excluded. If, however, any of the tracts thus listed and certified shall be found to have been duly selected under said act of Sept. 28th, 1850, and shall be shown by legal investi-

gation to be swamp or overflowed, or to belong to the State by said act, the Government will approve and certify other lands of like quantity in lieu thereof.

This adjustment, which I think is fair and just, and should be satisfactory to the State, will, when approved by you, be a final settlement between the State of Iowa and the United States, of all claims under the Des Moines River grant, as well as the act of 1841; except so far as valid and legally subsisting adverse rights may be found to exist to any of the tracts thus approved to the State.

74 The excess of the 500,000-acre grant (35,473.54 acres) thus deducted, is by an agreement between the State and The Des Moines Valley Railroad Company, (the beneficiary of the grant,) to be credited to said company at the rate of one dollar and twenty-five cents per acre, in the satisfaction of claims against the State on account of the improvement of the Des Moines River. Said company should, therefore, be credited on the claims they were under obligations to satisfy, with the sum of $44,341 67.

My authority extends only to the settlement with the General Government. I have no power to carry out this agreement between the State and the company. It is but just, however, for me to say, that this settlement has been made with the United States, with the full understanding that this arrangement shall be carried out.

The company, through its agents, has for a long time been laboring to this end. The opinion and decision of the Secretary of the Interior (a copy of which, accompanying Mr. Kilburne's report made last winter, is herewith transmitted for your examination in connection with this adjustment) is the result of their efforts.

The labors of their agents, Messrs. Kilburne & Macon, heretofore in the premises, have greatly relieved me, and enabled me to close up the settlement thus early. It is due to the company that this credit be given as soon as possible.

I hope, therefore, that this entire arrangement will meet your approbation; and that you will, as I think you have the right and may safely do, fully consummate and carry it out by giving said company the benefit of said credit against said claims without delay.

Very respectfully submitted,

J. A. HARVEY,
Commissioner.

Endorsement.

WASHINGTON CITY, *May 21st*, 1866.

Pursuant to the authority conferred by the act of the State of Iowa, approved March 30th, 1866, "for the adjustment of certain land claims with the General Government," I, Josiah A. Harvey, register of

75 the State land office, and as commissioner on behalf of the State, do hereby assent to the adjustment as herein stated, the said adjustment to be held as binding and conclusive on the said State, as provided in said act.

JOSIAH A. HARVEY,
Register of the State Land Office, and Commissioner on behalf of the State of Iowa.

DEPARTMENT OF INTERIOR, *May 22d*, 1866.

The adjustment as herein stated is hereby approved.

JAMES HARLAN,
Secretary.

STATE OF IOWA, *ss:*

The within adjustment as stated is hereby approved by us for the State of Iowa.

[STATE SEAL.]

W'M. M. STONE, *Governor,*
JA'S WRIGHT, *Sec. of State,*
JOHN A. ELLIOT, *Auditor,*
W. H. NOLANS, *Treasurer,*
Census Board.

JUNE 20TH, 1866.

76 EXHIBIT VI.

Whereas, heretofore, to wit, on the 12th day of November, A. D. 1863, Frederic C. Gebhard and George I. Forrest, of the city of New York, and William J. Barney, of the city of Chicago, acting merely as trustees, and employing therefor money furnished by them for that purpose, bought from the Dubuque & Sioux City Railroad Company certain lands hereinafter described, for the use and benefit of Frederic Schuchardt, Frederic C. Gebhard, Charles L. Frost, George I. Forrest, W'm D. Thompson, Joseph Tuckerman, Lucius Tuckerman, Morris K. Jessup, John B. Thompson, and Edward Stimson; and whereas afterwards, to wit, on the 29th day of April, 1864, said trustees bought, with like funds and under similar circumstances, certain other lands from T. B. Aldrich, hereinafter described; and whereas, since said purchases as above in their behalf, said parties have incorporated themselves under the laws of the State of Iowa, under the name and style of "The Iowa Homestead Company," and now desire to have the titles to said lands relinquished to said company; and whereas, on the 28th day of June, A. D. 1864, Frederic C. Gebhard, one of said trustees, resigned his position and trust as trustee aforesaid, and his resignation was duly accepted in writing, by all the parties in interest:

Now, therefore, in consideration of the premises, and one dollar to each of us in hand paid, we, George I. Forrest and William J. Barney, remaining trustees, do hereby remise, release, and quitclaim unto the Iowa Homestead Company, and its legal representatives forever, all our right, title, and interest in and to the following-described lands, situated in Webster County, State of Iowa, to wit:

77 Parts of section.	Section.	Township north.	Range west.	Acres.
E. h'f S. E., N. fr'l h'f N. E., and N. fr'l h'f N. W.	1	87	27	266. 44
All of	3	87	27	673. 90
S. W. q'r	5	87	27	160
W. fr'l h'f and S. E. q'r	7	87	27	444. 30
S. h'f	9	87	27	320
N. h'f N. W. q'r and E. h'f S. W.	11	87	27	160
S. W. of N. W. fr'l q'r and W. h'f S. W.	3	88	27	120
All 5, 7, and	9	88	27	1, 940. 16
W. h'f N. E. and W. h'f S. E.	15	88	27	160
W. h'f	15	88	27	320
All 17, 19, and 21, except W. h'f N. W. 17	21	88	27	1, 799. 10
S. h'f of N. E. and S. h'f of N. W.	23	88	27	160
S. h'f	23	88	27	320
All of	25	88	27	640
W. h'f of S. W. and the N. h'f	27	88	27	400
N. E. of S. W. and N. W. of S. E.	27	88	27	80
All of	29	88	27	640
E. h'f of N. E.	31	88	27	80
N. h'f of S. W. and S. W. of S. W.	31	88	27	103. 36
All of	33	88	27	640
N. h'f	35	88	27	320
N. h'f of S. W. and N. h'f of S. E.	35	88	27	160

Parts of section.	Section.	Township north.	Range west.	Acres.
All of	17	89	27	640
W. h'f of N. E	19	89	27	80
W. fr'l h'f and S. E. q'r of	19	89	27	503.92
S. h'f of S. W	21	89	27	80
S. h'f of N. W. and the S. W. q'r	27	89	27	240
W. h'f of S. E. and S. E. of S. E	27	89	27	120
All 29, 31, and	33	89	27	1,942.72
W. h'f of N. W. and S. E. of N. W	35	89	27	120
W. h'f of S. E. and the S. W. q r	35	89	27	240
N. fr'l h'f of N. W	3	90	27	72.56
N. E. of S. E	9	90	27	40
W. h'f of N. W. and N. W. of S. W	11	90	27	120
Lots 1, 9, and 10	1	87	28	82
Lots 4, 5, 6, and 7 and W. h'f of S. W	1	87	28	293.84
N. fr'l h'f and the S. W	3	87	28	518.28
All 5, 7 and	9	87	28	1,935.96
W. h'f and S. E. q'r	11	87	28	480
All of 1 and E. h'f and N. W. q'r	3	88	28	1,268.74
N. fr'l h'f	5	88	28	401.44
S. E. q'r	7	88	28	160
S. h'f of	9	88	28	320
S. h'f of N. W. and the S. W. q'r	11	88	28	240
E. h'f and the N. W. q'r	13	88	28	480
Lot 7 and S. W. of S. E	15	88	28	85.55
N. W. of N. W. and S. h'f of S. W	15	88	28	120
N. E. q'r	17	88	28	160
W. h'f of N. E. and the N. W. q'r	19	88	28	231.03
S. fr'l h'f	19	88	28	310.50
N. h'f	21	88	28	320
Lots 1, 2, 3, 5, 6, and 7	23	88	28	267.80
N. h'f of S. E. and S. E. of N. E	23	88	28	120
E. h'f of S. W	25	88	28	80
N. W. frac. q'r lots 2 and 3 and the S. h'f	27	88	28	587.28
All of 29 and	31	88	28	1,259.08
S. W. q'r	33	88	28	160
W. h'f of N. E. q'r and S. E. q'r and W. h'f	35	88	28	513.25
S. W. of N. E. fr'l and the N. W. fr'l q'r	1	89	28	174.03
W. h'f, of S. E. and the S. W. q'r	1	89	28	240
All of 3, 5 and	7	89	28	1,794.11
N. h'f and S. E. q'r	9	89	28	480
All of	11	89	28	640
W. h'f and W. h'f of N. E	13	89	28	400
W. h'f of S. E. and S. E. of S. E	13	89	28	120
All	15	89	28	640
N. E. q'r	17	89	28	160
E. h'f of S. E. and N. W. of S. E	17	89	28	120
N. E. of S. W. and S. E. of N. W	17	89	28	80
78 N. E. of N. W	17	89	28	40
Lots 6, 7, 8, and 9 and all of 5 S. Lizzard River	19	89	28	88.74
E. h'f and S. W	21	89	28	480
All of 23, 25 and	27	89	28	1,920
S. h'f of N. E	29	89	28	80
All of	31	89	28	657.34
S. h'f and N. E q'r	33	89	28	480
All of	35	89	28	640
E. fr'l h'f N. E	1	90	28	76.99
E. h'f and N. W. fr'l q'r	7	90	28	480.25
E. h'f of S. W. and N. W. of S. W	7	90	28	120.14
All of	9	90	28	640
N. E. of S. W. and the S. E. q'r	13	90	28	200
S. h'f	11	90	28	320
W. h't of N. W	13	90	28	80
All of 15, 17, 19, 21 and	23	90	28	3,200.13
N. E. of S. E	25	90	28	40
S. W. of N. W. and W. h'f of S. W	25	90	28	120
All of 27, 29, 31, 33 and	35	90	28	3,147.24
E. fr'l h'f of N. E. and N. W. fr'l of N. E	3	86	29	110.22
N. W. of N. W	9	86	29	40
All of	1	87	29	668.12
N E. fr'l of N. F	3	87	29	44.42
N. W. of N. W. and S. E. of N. W	9	87	29	80
S. W. of S. W. and E. h'f of S. W	9	87	29	120
N. W. of S. E	9	87	29	40
E. h'f of N. W. and S. W. of N. W	23	87	29	120
S. E. of N. E. and W. h'f of N. E	29	87	29	120
N. W. q'r and W. h'f of S. W	29	87	29	240
S. E	29	87	29	160
All exeept S. E. of S. E	31	87	29	585.60
All except W. h'f of N. W	33	87	29	560
Lot 1 and N. E. fr'l of N. E	1	88	29	94.45
Lots 7 and 8, S. E. S. E	1	88	29	102.13
W. h'f of S. E. and W. h'f of S. W	1	88	29	160
All 3, 5, 7, 9, 11 and	13	88	29	3,993.84

Parts of section.	Section.	Township north.	Range west.	Acres.
All 15, 17, 21, 23, 25 and (except N. E. of N. E. of 23)	27	88	29	3,800
N. h'f of N. E	29	88	29	80
All of section	35	88	29	640
All 1, 3 and	5	89	29	1,841.08
E. h'f	7	89	29	320
All 9 and	11	89	29	1,280
N. E	13	89	29	160
W. h'f and S. E	15	89	29	480
All of section	17	89	29	640
N. fr'l h'f	19	89	29	328.88
All of section	21	89	29	640
W. h'f and S. E	23	89	29	480
W. h'f and S. E	25	89	29	480
All h'f section	27	89	29	640
E. h'f	29	89	29	320
All 33 and	35	89	29	1,280
All 1 and	3	90	29	1,116.00
E. fr'l h'f	5	90	29	312.39
S. h'f of N. W. fr'l and S. W	5	90	29	240
All 7, 9, 11, 13 and	15	90	29	3,159.66
All 17, 19, 21, 23 and	25	90	29	3,152.19
All 27, 29, 31, 33 and	35	90	29	3,204.24
S. E	15	87	30	160
S. E. of S. W	25	87	30	40
S. E. of N. W	27	87	30	40
S. h'f of N. E	31	87	30	80
E. h'f N. W. fr'l and S. W. of N. W	31	87	30	119.15
N. fr'l h'f of S. W	31	87	30	79.25
W. h'f of S. E. and N. E. S. E	31	87	30	120
N. h'f	33	87	30	320
W. h'f S. W. and N. E. of S. W	33	87	30	120
N. W. S. E. and S. E. of S. E	33	87	30	80
W. h'f S. W. and N. E. S. W	35	87	30	120
79 N. W. of S. E	35	87	30	40
E. fr'l h'f of N. E. and E. h'f S. E	1	88	30	186.62
N. W. of S. W	11	88	30	40.
N. E. N. E	23	88	30	40
N. W. S. E	27	88	30	40
E. h'f S. E	1	89	30	80
N. E	7	89	30	160
S. W. N. W and S. h'f	11	89	30	360
N. W. of S. W. and E. h'f S. W	15	89	30	120
N. h'f	17	89	30	320
W. h'f N. E	19	89	30	80
W. h'f	25	89	30	320
S. h'f of N. W. and N. W. of S. W	3	90	30	120
E. h'f of S. W. q'r and S. E	3	90	30	240
S. E. q'r	19	90	30	160
E. h'f of N. E. and E. h'f of S. E	21	90	30	160
All of section	33	90	30	640
N. h'f of N. E., S. and N. h'f	5	90	30	385.07
S. W. q'r and N. E. of S. E	5	90	30	200
S. h'f of N. W., N. h'f of S. W	9	90	30	160
S. W. of S. W	9	90	30	40
S. W. of N. W. and E. h'f of N. W	11	90	30	120
W. h'f of N. E., E. h'f of S. W., and S. E	11	90	30	320
N. h'f of S. E., N. E. S. W., and W. h'f of S. W	13	90	30	200
S. W. of N. E., N. W. of S. W. and N. W	15	90	30	240
E. h'f S. W., N. W. S. E., and E. h'f S. E	15	90	30	200
Total				80,244.24

Being in all 80,244 $\frac{24}{100}$ acres, by Government survey.

Reserving to the Dubuque & Sioux City Railroad Company the right of way across said lands, with full and free right to locate said railroad thereon, to borrow earth, stone, or gravel for construction, and to deposit waste earth thereon, when necessary.

In testimony whereof, we hereunto set our hands this twenty-fourth day of August, A. D. 1864.

GEO. I. FORREST.
W'M J. BARNEY.

STATE OF NEW YORK, *County of New York:*

On this 24th day of August, A. D. 1864, personally came before me, a

notary public in and for said county, George I. Forrest, to me personally known to be one of the identical persons whose names are affixed to the above deed, as grantors, and acknowledged the same to be his voluntary act and deed.

Witness my hand and notarial seal.

[L. S.] FREDERICK HINKEL,
Notary Public for City and County of New York, N. Y.

80 STATE OF IOWA, *Webster County:*

On this 19th day of September, A. D. 1864, before me, H. Beecher, clerk of the district court Webster County, Iowa, personally came William J. Barney, to me personally known to be one of the identical persons whose names are subscribed to the within deed, as grantors, and acknowledged the same to be his voluntary act and deed.

Witness my hand and official seal the day and year above written.

[L. S.] H. BEECHER,
Clerk D. C. Webster Co., Iowa.

Endorsement.

Geo. I Forrest and W. J. Barney, trustees, to Iowa Homestead Company, 80,244$\frac{24}{100}$ acres. Webster County, Iowa.

STATE OF IOWA, *Webster County, ss:*

Filed for record the 19th day of September, A. D. 1864, and duly recorded in deed-book "E," pages 672, '3, '4, '5, and '6.

I. GAMME, *Recorder.*
By R. E. CARPENTER, *Deputy.*

Fees paid.

Whereas heretofore, to wit, on the 12th day of November, A. D. 1863, Frederic C. Gebhard and George I. Forrest, of the city of New York, and W'm J. Barney, of the city of Chicago, acting merely as trustees and employing therefor money furnished by them for that purpose, bought from the Dubuque & Sioux City Railroad Company certain lands hereinafter described for the use and benefit of Frederic Schuchardt, Frederic C. Gebhard, Charles S. Frost, George I. Forrest, William D. Thompson, Joseph Tuckerman, Lucius Tuckerman, Morris K. Jessup, John B. Thompson, and Edward Stimson;

81 And whereas, afterwards, to wit, on the 29th day of April, A. D. 1864, said trustees bought, with like funds and under similar circumstances, certain other lands from T. B. Aldrich, also hereinafter deseribed;

And whereas, since said purchases as above, in this behalf, said parties have incorporated themselves under the laws of the State of Iowa, under the name and style of "The Iowa Homestead Company," and now desire to have the titles to said lands relinquished to said company;

And whereas, on the 28th June, A. D. 1864, Frederic C. Gebhard, one of said trustees, resigned his position and trust, as trustee aforesaid, and his resignation was duly accepted in writing, by all the parties in interest:

Now, therefore, in consideration of the premises, and one dollar to each of us in hand paid, we, George I. Forrest and William J. Barney, remaining trustees, do hereby remise, release, and quitclaim unto The

Iowa Homestead Company, and its legal representatives forever, all our right, title, and interest in and to the following-described lands, situated in Humboldt County, State of Iowa, to wit:

Part of section.	Section.	Township.	Range.	Acres.
W. h'f of S. W	29	91	29	80
S. E. of S. E	35	91	29	40
All of 1, 3, 5, 9, and	11	91	30	3,284.24
N. E. of S. E. W. h'f S. E. and N. E	7	91	30	280
West fr'l h'f	7	91	30	340.32
North h'f, N. W. of S. E., and S. W	13	91	30	520
N. E	15	91	30	160
Total				4,704.65

Being in all 4,704.66 acres, by Government survey.

Reserving to the Dubuque & Sioux City Railroad Company the right of way across said lands, with full and free right to locate said railroad thereon, to borrow earth, stone, and gravel for construction, and to deposit waste earth thereon when necessary.

In testimony whereof we hereunto set our hands this 24th day of August, A. D. 1864.

GEORGE I. FORREST.
WILLIAM J. BARNEY.

82 STATE OF NEW YORK, *County of New York:*

On this 24th day of August, 1864, personally came before me, a notary public in and for said county, George I. Forrest, to me personally known to be one of the identical persons whose names are affixed to the above deed as grantors, and acknowledged the same to be his voluntary act and deed.

Witness my hand and notarial seal, the day and year first above written.

[SEAL.] FREDERICK HINKEL,
Notary Public for City of New York, N. Y.

STATE OF IOWA, *Humboldt County:*

On this 14th day of September, A. D. 1864, before me, a notary public in and for said county, personally came William J. Barney, to me personally known to be one of the identical persons whose names are subscribed to the within deed as grantors, and acknowledged the same to be his voluntary act and deed.

Witness my hand and notarial seal.

CHARLES BERGK,
Notary Public.

Endorsement.

Geo. I. Forrest and W. J. Barney, trustees to Iowa Homestead Company, 4,704.66 acres, Humboldt County, State of Iowa.

STATE OF IOWA, *Humboldt County, ss:*

Filed for record the 15th day of September, A. D. 1864, at 10 o'clock a. m. Recorded in book A of deeds, page 524.

(Signed) CHA'S BERGK, *Recorder.*

Fees, 80 cents; paid.

83 Whereas, heretofore, to wit, on the 12th day of November, A. D. 1863, Frederic C. Gebhard and George I. Forrest, of the city of New York, and William J. Barney, of the city of Chicago, acting merely as trustees, and employing therefor money furnished by them for that purpose, bought from the Dubuque & Sioux City Railroad Company certain lands hereinafter described, for the use and benefit of Frederic Schuchardt, Frederic C. Gebhard, Charles L. Frost, George I. Forrest, W'm D. Thompson, Joseph Tuckerman, Lucius Tuckerman, Morris K. Jessup, John B. Thompson, and Edward Stimson; and whereas said parties, since said purchase in their behalf, have incorporated themselves under the laws of the State of Iowa, under the name and style of "The Iowa Homestead Company," and now desire to have the title to said lands relinquished to said company; and whereas on the 28th of June, A. D. 1864, Frederic C. Gebhard, one of said trustees, resigned his position and trust as trustee aforesaid, and his resignation was duly accepted in writing, by all the parties in interest:

Now, therefore, in consideration of the premises, and one dollar to each of us in hand paid, we, George I. Forrest and William J. Barney, remaining trustees, do hereby remise, release, and quitclaim unto "The Iowa Homestead Company," and its legal representatives forever, all our right, title, and interest in and to the following-described lands, situate in Hamilton County, State of Iowa, to wit:

Parts of section.	Section.	Township north.	Range west.	Acres.
North fr'l h'f and S. E. q'r	5	87	26	503.98
E. h'f of S. W. q'r	5	87	26	80
S. h'f	9	87	26	320
S. W. q'r of S. W. q'r	29	88	26	40
All of section	31	88	26	580.68
S. W. q'r of S. E. q'r	7	89	26	40
Total				1,564.66

Being in all $1,564\frac{66}{100}$ acres, by Government survey.

Reserving to the Dubuque & Sioux City Railroad Company the right of way across said lands, with full and free right to locate said
84 railroad thereon, to borrow earth, stone, or gravel for construction, and to deposit waste earth thereon, when necessary.

In testimony whereof we hereunto set our hands this twenty-fourth day of August, A. D. 1864.

GEO. I. FORREST.
W'M J. BARNEY.

STATE OF NEW YORK,
County of New York:

On this 24th day of August, A. D. 1864, personally came before me, a notary public in and for said county, George I. Forrest, to me personally known to be one of the identical persons whose names are affixed to the above deed as grantors, and acknowledged the same to be his voluntary act and deed.

Witness my hand and notarial seal the day and year first above written.

[L. S.]

FREDERICK HINKEL,
Notary Public for City and County of New York, N. Y.

STATE OF IOWA, *Webster County:*

On this 26th day of September, 1864, before me, M. Sweeney, clerk of the district court, Hamilton County, Iowa, personally came William J. Barney, to me personally known to be the identical person whose name is affixed to the above instrument of conveyance, as one of the grantors, and acknowledged the same to be his voluntary act and deed.

Witness my hand and seal of said court the date last above written.

[L. S.] M. SWEENEY, *Clerk.*

Endorsement.

George I. Forrest and W. J. Barney, trustees to Iowa Homestead Company, 1,564$\frac{66}{100}$ acres, Hamilton County.

STATE OF IOWA, *Hamilton County:*

Filed for record this 26th day of September, A. D. 1864, at 8 o'clock, a. m. and recorded in book 3 of deeds, pages 680 and 681.

J. M. BILL, *Recorder.*

Fees, paid, 80 cents; 50 cents for stamps.

85 EXHIBIT VII.

On the eighth of August, 1864, the Congress of the United States passed the following act:

"An act granting certain lands to the Territory of Iowa to aid in the improvement of the navigation of the Des Moines River, in said Territory.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That there be, and hereby is, granted to the Territory of Iowa, for the purpose of aiding said Territory to improve the navigation of the Des Moines River from its mouth to the Raccoon Fork (so called) in said Territory, one equal moiety, in alternate sections, of the public lands, (remaining unsold, and not otherwise disposed of, incumbered, or appropriated,) in a strip five miles in width on each side of said river, to be selected within said Territory by an agent or agents, to be appointed by the governor thereof, subject to the approval of the Secretary of the Treasury of the United States.

"SECTION 2. *And be it further enacted*, That the lands hereby granted shall not be conveyed or disposed of by said Territory, nor by the State to be formed out of the same, except as said improvements shall progress; that is, the said Territory or State may sell so much of said lands as shall produce the sum of thirty thousand dollars, and then the sales shall cease until the governor of said Territory or State shall certify the fact to the President of the United States that one-half of said sum has been expended upon said improvements, when the said Territory or State may sell and convey a quantity of the residue of said lands sufficient to replace the amount expended, and thus the sales shall progress as the proceeds thereof shall be expended, and the fact of such expenditure shall be certified, as aforesaid.

86 "SEC. 3. *And be it further enacted*, That the said river Des Moines shall be and forever remain a public highway for the use of the Government of the United States, free from any toll or other charge whatever for any property of the United States, or person in their service, passing through or along the same: Provided always,

That it shall not be competent for the said Territory or future State of Iowa to dispose of said lands, or any of them, at a price lower than, for the time being, shall be the minimum price for other public lands.

"SEC. 4. *And be it further enacted*, That whenever the Territory of Iowa shall be admitted into the Union as a State, the lands hereby granted for the above purpose shall be and become the property of said State for the purpose contemplated in this act, and no other: Provided, the legislature of the State of Iowa shall accept the said grant for the said purpose.

"Approved August 8th, 1846."

This grant was fully accepted by a resolution of the general assembly, passed Jan. 9th, 1847, and everything done on the part of the State to perfect the title under the act.

Agents were afterwards duly appointed by the governor of the State, who selected the sections designated by "odd numbers" throughout the whole extent of the grant. (The selection by "odd numbers" was approved by the Secretary of the Treasury.)

The lands now in controversy lie within five miles of the Des Moines River, and within the limits of what was the Territory of Iowa on the 8th day of August, 1846, but not between the Raccoon Fork and the mouth of the river; they are also within six miles of the Dubuque & Pacific R. R. The present plaintiff holds by a title derived from the State as trustee of the Des Moines River fund. If, under all the circumstances of the case, the grant extends above the Raccoon Fork, the plaintiff's title is complete and he should recover; otherwise not. The land in controversy is worth more than $2,000, two thousand dollars.

On the 24th of February, 1847, the general assembly of the State of Iowa provided for the election of a board of public works, consisting of a president, secretary and treasurer. To this board the whole
87 subject of receiving and managing the lands, and providing for the construction of the improvement was committed. On the (2d) second of August, (1847,) eighteen hundred and forty-seven, the board was duly elected and was fully organized, and went into operation on the (22d) twenty-second of September following. On the (23) twenty-third of February, (1848,) eighteen hundred and forty-eight, the Commissioner of the General Land Office wrote to the board of public works as follows:

GENERAL LAND OFFICE, *Feb. 23d*, 1848.

SIR: Your communication of the 29th of November last, enclosing a copy of yours of the 22d of September last, has been received, and would have received an earlier response, but for the erroneous and defective surveys along the Des Moines River which prevented this office from submitting to the Secretary of the Treasury, the selections made by the State of Iowa for the improvement of the navigation of that river, under the act of the 8th of August, 1846. As these surveys have been corrected, action will be had on those selections as soon as possible, and when approved they will be certified to you.

It is not usual to furnish more than a diagram of the grant, in cases of this kind, with a certified list of the tracts granted, as above mentioned, and these will, of course, be transmitted as soon as they can be prepared.

All the aid that this office can give the board of public works in the discharge of its duties, will be cheerfully rendered; and if it is possible to procure copies of the reports of the Topographical Bureau, of the

examinations heretofore made of the Des Moines River, it will afford me pleasure to do so, and forward them to you.

A question has arisen as to the extent of the grant made to Iowa by the act of 8th of August, 1846, and the opinion of this office has been requested on that point.

By the terms of the law, the grant is of one equal moiety in alternate sections of the public lands remaining unsold, and not otherwise disposed of, incumbered, or appropriated, in a strip of five miles in width on each side of said river, to be selected within said Territory,
88 &c., &c., and the proceeds are to be applied in the improvement of the navigation of that river, from its mouth to the Raccoon Forks. Hence the State is entitled to the alternate sections within five miles of the Des Moines River, throughout the whole extent of that river, within the limits of Iowa.

Very respectfully, your obedient servant,

RICHARD M. YOUNG, *Commissioner.*

CHARLES CORKERY, Esq.,
Sec. of B'd of Public Works, Fairfield, Iowa.

On the (19th) nineteenth of June, (1848,) eighteen hundred and forty-eight, without any notice of a change of opinion, a proclamation was issued, signed by the President, and countersigned by the Commissioner of the General Land Office, ordering into the market some of the lands which lay above the Raccoon Forks, and which would belong to the State according to the rule laid down in the aforesaid letter of the (23d) twenty-third of February, (1848,) eighteen hundred and forty-eight. The sale was to take place on the (16th) sixteenth of October, 1848.

On the (18th) eighteenth of September, (1848,) eighteen hundred and forty-eight, the board of public works, through its secretary, wrote to the Commissioner of the General Land Office as follows:

OFFICE OF THE BOARD OF PUBLIC WORKS,
Keokuk, Iowa, 18th Sept., 1848.

SIR: The attention of this office has been called to the proclamation of the President of the United States, bearing date the 19th of June last, for the sale of lands in Iowa, by which I perceive that lands donated to this State, for the improvement of the Des Moines River, are to be offered for sale in Iowa City, on Monday, the 16th of October next; these lands are situated above the Raccoon Forks of the Des Moines River, in township Nos. 79, 80, range Nos. 25, 26, &c., and a sale by the United States will be in conflict with your opinion, expressed to me in your letter of the 23d of February last, in which you say that "the State is entitled to the alternate sections within five miles of the Des Moines River, throughout the whole extent of that river, within the limits of Iowa."

89 Your very liberal opinion has influenced this board to place sixty miles of the contemplated improvement under contract, in addition to the thirty miles first let, and the State would now be greatly embarrassed by any impediments to her favorable prospects in this regard. We believe that the fact of having those lands embraced in the proclamation was an oversight, without any intentions to curtail the resources of the State, and that it will be corrected on being discovered.

Very respectfully, your obedient servant,

CHA'S CORKERY,
Sec. Board P. Works.

Hon. R. M. YOUNG, *Com'r of G. L. O.*

To this letter no reply was returned.

On the same day the following protest was sent to the land office at which the sale was ordered to take place, for the purpose of being filed therein.

OFFICE OF THE BOARD OF PUBLIC WORKS,
Keokuk, Iowa, 18th Sept., 1848.

SIR: I enclose you a copy of a letter which I have transmitted by this day's mail to the Commissioner of the General Land Office, and take this opportunity of protesting against the sale of the lands therein referred to.

This protest is based not only on the act of Congress donating lands to the State of Iowa, for the improvement of the Des Moines River, but also on the decision of the Commissioner of the General Land Office, bearing date 23d of February, 1848, in words as follows:

"A question has arisen as to the extent of the grant made to Iowa by the act of 8th of August, 1846, and the opinion of the Office has been requested on that point. By the terms of the law, the grant is of one equal moiety in alternate sections of the public lands remaining unsold, and not otherwise disposed of, incumbered, or appropriated, in a strip of five miles in width on each side of the said river, to be selected within said Territory, &c., and the proceeds are to be applied in the improvements of the navigation of said river, from its
90 mouth to the Raccoon Fork. Hence the State is entitled to the alternate sections within five miles of the Des Moines River, throughout the whole extent of that river, within the limits of Iowa."

As this board has had no information that this opinion has been rescinded, we are of the opinion that he will inform you on the subject within the two weeks prescribed for the continuance of the sale.

Respectfully,

CHA'S CORKERY, *Sec. B. P. W.*

C. NEELY, Esq., *Register*.

The following letter was written by the Senators and Representatives of Iowa, on the day of its date:

CONGRESS, *Jan. 8th*, 1849.

SIR: During the past summer we were much surprised to see lands proclaimed for sale by the President of the United States, which had been declared by the General Land Office, and considered by the people of Iowa, as the property of that State, under the act of 8th of August, 1846, "granting certain lands to the Territory of Iowa, to aid in the improvement of the navigation of the Des Moines River, in said Territory."

On inquiring of the Commissioner of the General Land Office as to the reasons for this course, he informed us that he had changed his original opinion as to the extent of this grant, and was now inclined to think that it was limited to the Raccoon Fork, but no official promulgation of this opinion has yet been given, except negatively, by proclaiming the lands, as above mentioned.

The granting clause in the act of August 8th, 1846, is so clear that we are constrained, by a due regard to the interests of the people and State of Iowa, to ask your consideration of the subject; and we are further encouraged to take this course, as the Commissioner, we are assured, will be pleased to extend to the State the full complement of the grant, if the law, in your opinion, should bear that construction. This

act of 8th August, 1846, is found in the acts of the first session 29th Congress, page 115.

The first part of the first section designates the object for which the grant was made, to wit: "There shall be, and hereby is, granted
91 to the Territory of Iowa, for the purpose of aiding said Territory to improve the navigation of the Des Moines River, from its mouth to the Raccoon Fork (so called) in said Territory."

The next clause describes the grant and its extent, to wit, "one equal moiety, in alternate sections, of the public lands (remaining unsold and not otherwise disposed of, encumbered, or appropriated) in a strip five miles in width on each side of said river."

This language is so plain that the extent of the grant is a self-evident proposition, and requires no argument. But the idea is entertained that the improvement governs the extent of the grant. This construction, we beg leave to state, has never obtained. Grants have frequently been made for seats of government, county sites, and the erection of public buildings; but in no case has it been contended that the object of the grant governs the extent of it; otherwise, the act passed by Congress on the same day with that now under consideration, (page 140), "to grant a certain quantity of land to aid in the improvement of the Fox and Wisconsin Rivers, and to connect the same by a canal, in the Territory of Wisconsin," must be construed as running the whole length of the Wisconsin River also, as the limitation of that grant to the Fox River, the lakes through which it passes, and the canal, is not more specific than the terms used to designate the grant for the improvement of the Des Moines River.

The reason for this extension of the grant to Iowa, above the terminus of the improvement, is moreover manifest, because near the mouth of the river that improvement will be very expensive, and there the grant does not attach, because the lands on the Missouri side of the river, below Sullivan's line, are in Missouri, and those on the Iowa side are the property of individuals; and further, most of the lands some distance up the Des Moines have been sold by the Government, and as the grant is only of the unsold and unappropriated lands in the alternate sections, the only equivalent for those which had been sold that could be given are the vacant lands far in the interior from the Mississippi, and hence the terms used in the law.

As the terms of the act, then, are so clear and explicit, and as
92 the reasons for the extensions of the grant, as provided by that act, are so obvious, we respectfully request, in our own behalf. and in behalf of the State and her citizens, who look with that confidence heretofore so fully justified, that you will not withhold the munificence of Congress, and thus cripple this young and rising State in her first great enterprise, and thus involve her in inextricable debt and difficulty. We earnestly request that you will give the necessary instructions for the selections and approval of these lands, along the entire route of the Des Moines, as contemplated by the law, as fast as the surveys are made and returned, and that the lands which belong to the State, which have been inadvertently offered, and which remain unsold, may be withdrawn from the market and certified to the State also.

We have the honor to be, with great respect, your obedient servants,

A. C. DODGE.
GEO. W. JONES.
SHEP'D LEFFLER.
W'M THOMPSON.

Hon. R. J. WALKER, *Sec. of the Treasury.*

The following was the response of the Secretary:

TREASURY DEPARTMENT, *March* 2, 1849.

GENTLEMEN: I have the honor to acknowledge the receipt of your communication of 8th of January last, and accompanying papers, on the construction of the act of Congress, "granting lands to the Territory of Iowa, to aid in the improvement of the navigation of the Des Moines River in said Territory," approved 8th August, 1846. I concur with you in the views contained in your communication, and am of the opinion that the grant in question extends, as therein stated, on both sides of the river from its source to its mouth, but not to lands on the river, in the State of Missouri. I have transmitted your communication and accompanying papers, with a copy of this letter, to the Commissioner of the General Land Office.

I have the honor, &c.,

R. J. WALKER, *Sec. of Treasury.*

Messrs. A. C. DODGE, G. W. JONES, L. LEFFLER, W. THOMPSON.

93 On the same day the Secretary transmitted a copy of the above letter to the Commissioner of the General Land Office, with the following order:

TREASURY DEPARTMENT, *March 2d*, 1849.

SIR: For your information and government on the subject to which it refers, I enclose a copy of a letter addressed to me under this date to members in both houses of Congress from the State of Iowa, with reference to the construction of the act of 8th of August, 1846, granting certain lands to the Territory of Iowa, to aid in the improvement of the navigation of the Des Moines River. I also enclose a letter to which the within is a reply, and accompanying papers.

Very respectfully,

R. J. WALKER.

R. M. YOUNG, *Commissioner.*

On the 1st of June, (1849), eighteen hundred and forty-nine, the Commissioner of the General Land Office wrote as follows to the land office at Iowa City:

GENERAL LAND OFFICE, *June 1st*, 1849.

GENTLEMEN: The Secretary of the Treasury having decided that the grant to the State of Iowa, under the act of the 8th of Aug., 1846, extended along the Des Moines River to its source, and that it did not stop at the Raccoon Forks, as this office had previously decided, you are hereby directed to withold from sale all lands situated in the odd-numbered sections, within five miles on each side of that river, above the Raccoon Forks. Enclosed I send you a diagram upon which the State selections above that point are colored yellow.

I have also to request that you will make out a list showing the sales and locations which have been made within these selections, as it is designed to endeavor to procure some legislative action on the part of Congress confirmatory of them. The diagram enclosed extends to 83 N. 26, W., being as far as the surveys have progressed in that direction.

I am, very respectfully, your obedient servant,

R. M. YOUNG, *Commissioner.*

REGISTER AND RECEIVER,
Iowa City, Iowa.

94 On the nineteenth of December, 1849, the following letter was written by the Commissioner of the General Land Office to Jesse Williams, esq., the then secretary of the board of public works:

GENERAL LAND OFFICE, *Dec. 19th*, 1849.

SIR: A letter has been received at this office from the Hon. A. C. Dodge, and the Hon. Geo. W. Jones, enclosing one from you to the former, dated the 30th ult., requesting that you may be furnished with "a list of the Des Moine' River grant above the Raccoon Forks." In reply I have to state that said list has not been furnished, for the reason that the posting of the land warrants in the Iowa City district was not completed on the books of this office until recently. Said list is now in the course of preparation, and will be ready for transmission at an early day. In the latter part of your letter you say, "the lists heretofore forwarded of land below the forks have been furnished the Secretary of State, instead of the board, who are the rightful and only agents of the State for said land." In the absence of evidence, showing the right of another to receive confirmed lists of State grants, it is usual to send them to the Secretary of State; such is the case at present in relation to this grant. If, however, you will furnish this office with evidence as to your right, as secretary of the board of public works, to receive said lists, and to correspond with this office in relation thereto, they will hereafter receive the desired direction.

I am, sir, your obedient servant,

J. BUTTERFIFLD, *Commissioner.*

JESSE WILLIAMS, Esq.,
Iowa City, Iowa.

On the 14th day of January, 1850, the Commissioner of the General Land Office made a report to the Secretary of the Interior, of the amount of land which had been granted to the several States respectively for internal improvements.

The amount charged against Iowa in the list is 825,078 acres, and the following note is thereto appended: "This amount, in accordance with the decision of the Secretary of the Treasury, of the 2d of
95 March, (1849,) eighteen hundred and forty-nine, will be increased by the unadjusted portion of the grant for the improvement of the Des Moines River, situated between the Raccoon Fork and the source of said river, estimated to contain about 900,000 acres."

On the 13th of March, 1850, the Commissioner of the General Land Office submitted to the Secretary of the Interior three several lists of land, the first of which had the following heading:

"No. 1. Showing the tracts falling within the limits of the Des Moines grant above the Raccoon Fork, &c., under the decision of the Secretary of the Treasury of March 2d, 1849."

On the 6th of April, 1850, the Secretary of the Interior, who now had the supervision of the General Land Office, made the following decision:

DEPARTMENT OF THE INTERIOR,
Washington, April 6th, 1850.

SIR: Having considered the question submitted to me, connected with the claim of the State of Iowa, to select, under the act of August 8th, 1846, lands for the improvement of the Des Moines River, I am

clearly of the opinion that you cannot recognize the grant as extending above the Raccoon Forks, without the aid of an explanatory act of Congress. It is clear to my mind, from the language of the act of August 8th, 1846, itself, that it was not the intent of the act to extend it further. My construction is confirmed by the report of the committee and the accompanying papers. If in any report to Congress you have recognized the grant as extending to the source of the river, it will be proper to correct it, that Congress, if they see fit, may extend the grant. The opinion expressed by the late Secretary of the Treasury on the subject is entitled to great respect, but I cannot concur in it, and the law not having been carried into effect by him, his opinion, merely expressed, is open for reversion.

The lists of selections, and other papers submitted with your letter of the 13th ult., are herewith returned.

As Congress is now in session, and may take action on the sub-
96 ject, it will be proper, in my opinion, to postpone any immediate steps for bringing into market the lands embraced in the State's selections.

I am, sir, very respectfully, your obedient servant,

T. EWING, *Secretary.*

The COMMISSIONER OF THE GENERAL LAND OFFICE.

On the 14th of April, 1850, the Senators and Representatives of Iowa protested against this decision, and appealed therefrom to the President. He referred the matter to the Attorney General, (Mr. Johnson,) who, on the 19th July, 1850, made his report, giving it fully as his opinion that, by the terms of the grant itself, it extended along the Des Moines River, up to its very source.

Previous to the promulgation of this opinion, President Taylor died, and a new Cabinet was formed not long afterwards, and before any further action was taken upon this matter. Instead of giving effect to the opinion of Mr. Johnson, the question was submitted anew to the Attorney General, (Mr. Crittenden,) who, on the 30th of June, 1851, decided that, in his opinion, the grant did not extend above the Raccoon Fork.

The Secretary of the Interior, Alex. H. H. Stuart, at first (26th July, 1851,) concurred in this opinion, but afterwards consented to bring the whole matter before the President and Cabinet, who made a decision, as indicated in the following letter:

DEPARTMENT OF THE INTERIOR,
Washington, Oct. 29th, 1851.

SIR: I herewith return all the papers in the Des Moines case, which were recalled from your office about the first of the present month. I have reconsidered and carefully reviewed my decision of the 26th of July last, and in doing so, find that no decision which I can make will be final, as the question involved partakes more of a judicial than of an executive character, which must ultimately be determined by the judicial tribunals of the country; and although my own opinion on the true construction of this grant is unchanged, yet, in view of the great conflict of opinion among the executive officers of the Government, and also in view of the opinion of several eminent jurists, which have
97 been presented to me in favor of the construction contended for by the State, I am willing to recognize the claim of the State, and to approve the selections, without prejudice to the rights, if any there be, of other parties, thus leaving the question as to the proper construction of the statute entirely open to the action of the judiciary.

You will please, therefore, as soon as may be practicable, submit for my approval such lists as have been prepared, and proceed to report, for like approval, lists of the alternate sections claimed by the State of Iowa above the Raccoon Fork, as far as the surveys have progressed, or may hereafter be completed and returned.

I am, sir, very respectfully, your obedient servant,

ALEX. H. H. STUART, *Secretary.*

To the COMMISSIONER OF THE GENERAL LAND OFFICE.

On the following day three lists of lands were prepared in the General Land Office, the heading of which will show their respective purposes, and are as follows:

List No. 1. "Showing the tracts falling within the limits of the Des Moines grant, above the Raccoon Forks of the Des Moines River, so far as the surveys have extended, under the decision of the Secretary of the Treasury of 2d of March, 1849, that such grant extended to the north boundary of the State."

List No. 2. Showing tracts disposed of within those limits, in the interval between the date of one of the previous orders limiting the grant and one of those extending it above the forks.

List No. 3. Showing the vacant lands subject to the claim of the State.

The third of these lists was presented to the Secretary of the Interior for his approval, to which he appended the following explanatory statement:

DEPARTMENT OF THE INTERIOR, *Oct. 30th*, 1851.

The selections embraced in the within list (No. 3) are hereby approved, in accordance with the views expressed in my letter of the 29th inst. to the Commissioner of the General Land Office, subject to any rights which may have existed at the time the selections were
98 made known at the Land Office by the agents of the State, it being expressly understood that this approval conveys to the State no title to any tract or tracts which may have been sold or otherwise disposed of, prior to the receipt by the local land officers of the letter of the Commissioner of the General Land Office, communicating the decision of Mr. Secretary Walker, to the effect that the grant extended above the Raccoon Fork.

ALEX. H. H. STUART, *Secretary.*

The following amounts of land were, at different times, approved and certified to the State of Iowa under this grant, all lying above the Raccoon Fork:

October 30th, 1851	214,391.58	acres.
March 10th, 1852	143,908.37	"
December 17th, 1853	33,142.43	"
" 30th, do	12,813.51	"
Total	404,255.89	"

The following is the heading of the list, which was approved by the Secretary of the Interior on the 17th of December, 1853, together with the terms of approval. A similar heading and approval were appended to the list, approved on the 30th of the same month:

"A list showing the vacant lands in the odd-numbered sections above the Raccoon Forks, and within five miles of the Des Moines River, so

far as the surveys have progressed, falling to the State of Iowa, under the act of the 8th of August, 1846, as construed by the Secretary of the Treasury in his letter of the 2d of March, 1849, and of the Secretary of the Interior, of the 29th of October, 1851, which have not heretofore been approved."

Which list was approved in these words:

DEPARTMENT OF THE INTERIOR,
December 17th, 1853.

The selections in the within list are hereby approved to the State of Iowa, under the act of the 8th of August, 1846, without prejudice to the rights, if any there be, of other parties.

R. MCCLELLAND, *Secretary.*

The following communication was addressed by the Secretary of the Interior to the Commissioner of the General Land Office, on the day of its date:

99 DEPARTMENT OF THE INTERIOR,
Washington, August 23d, 1852.

SIR: I have examined the question involved in the appeal of the Honorable A. C. Dodge, Geo. W. Jones, and Bernhart Henn, of Iowa, from the judgment of the Commissioner of the General Land Office, in relation to their application for the issue of patents on the sales and locations of portions of the odd-numbered sections along the Des Moines River, above the Raccoon Forks, which had been made prior to the receipt by the district land officers of Mr. Secretary Walker's decision of the 2d of March, 1849, and have to state that, as I approved the selections above the Raccoon Fork, with the express understanding that that approval should not convey to the State any title to tracts which might have been sold or otherwise disposed of prior to the receipt of Mr. Walker's decision, the issuing of patents on the sales and locations in question is in perfect accordance with the views expressed in my letter to the Commissioner of the 29th of October last, and the terms of approval of the selections on the following day.

I am, sir, very respectfully, your obedient servant,

ALEX. H. H. STUART, *Secretary.*

The ACTING COMMISSIONER OF THE GENERAL LAND OFFICE.

On the 6th of January, 1854, the Commissioner of the General Land Office wrote to the superintendent of public *institutions* of the State of Iowa, as follows:

GENERAL LAND OFFICE, *Jan. 6th*, 1854.

SIR: Herewith I enclose a copy of a list of *laws* falling to the State of Iowa, under the act of 8th of August, 1846, selected by the State under the 8th section of the act of 4th of September, 1841, and approved before the grant for the improvement of the Des Moines River was adjusted as far as the township embraced by the lists, which was approved by the Secretary of the Interior on the 30th ultimo. The quantity of land thus approved under the act of 8th of August, 1846, is twelve thousand eight hundred and thirteen and fifty-one hundredths of an acre, (12,813.51.) These lands were selected on the 20th of
100 July, 1850, and embraced by lists Nos. 49 to 54, inclusive, and in lieu thereof the State is entitled to select an equal quantity elsewhere.

Be pleased to acknowledge the receipt of this communication.

I am, very respectfully, your obedient servant,

JOHN WILSON, *Commissioner.*

THOMAS H. BENTON, Jr., Esq.,
Sup't of Public Instruction, Iowa City, Iowa.

In explanation of the foregoing letter, it is admitted that the act of 4th of September, 1841, referred to, gave to each of the new States 500,000 acres of land on its coming into the Union. In Iowa this land was devoted to educational purposes. The amount of 12,813.51 acres had been selected as a portion of this grant from among the odd-numbered sections of land lying within five miles of the Des Moines River, and above the Raccoon Fork; and, according to the construction of the act of August 8th, 1846, which prevailed when this letter of January 6th, 1854, was written, this land which had been so selected for the school fund, had been previously appropriated by Congress to the Des Moines River fund. The superintendent of public instruction was therefore informed that the State was entitled to select an equal quantity of land elsewhere, in lieu of this amount, which had been erroneously selected for school purposes.

On the 21st of March, 1856, the Commissioner of the General Land Office decided that the grant was limited to the Raccoon Fork. The matter was then brought anew before the Secretary of the Interior, and was by him referred to the Attorney General.

On the 29th of May, 1856, the Attorney General, after a statement of the facts of the case, proceeds as follows to his conclusions:

On these facts you present the following questions, namely:

1st. Whether the decision of Mr. Stuart, and the consequent action of the Department down to the present time, are conclusive in favor of the State of Iowa?

2d. Whether, if it be an open question, the grant extends, in my opinion, above the Raccoon Fork?

101 3d. Whether it is to be considered as reaching into the Territory of Minnesota?

I proceed to state such views as occur to me on the whole subject, to be applied afterwards to the particular questions which you propounded. I suppose it must be conceded that an opinion of the Attorney General is not conclusive; that is, it is not compulsory on the President, or even on a head of Department.

It is inconvenient, however, to have conflict of opinion between the Attorney General and a head of Department; and that inconvenience is placed in the strongest light by the facts of this case, when the affirmative opinion of one Attorney General went disregarded by one Secretary, and a negative opinion of another Attorney General by the succeeding Secretary. There could be no more flagrant example of confusion of opinion and action.

A Secretary, undoubtedly, is entitled to have and to act upon his conscientious opinion of a question, even after he has taken the opinion of the Attorney General, but the interest of parties and the credit of the Government require decision; and it would seem that any such conflict of opinion between the Secretary asking, and the Attorney General giving official advice, should be referred at once to their common superior, the President, in order that the particular question of administration itself may receive the authoritative decision of the Executive Department. That did not happen in this case in either of its stages; and thus all

the embarrassment of contradicting opinions and acts, with the uncertainty of present duty which they create, are transmitted to you for determination.

Is it necessary now for me to weigh the reasons of Mr. Crittenden against the reasons assigned by Mr. Johnson, and conclude which of them shall be overruled by me? That would be an unwelcome task. It must be admitted, on the mass of argument before me, that there are two sides to the question of the true legal intendment of the act of Congress. At the same time it is due to frankness to say, that if constrained to judge between them, the inclinations of my mind would be to the side accepted by Mr. Crittenden, because the language of the
102 statute admits of such construction, and because, on the retrospect of the history of the case, it is impossible for me to doubt as to the actual intentions of Congress; that is, if the question were one of new impression, the tendency of my judgment would be to say, that the grant is limited to the line of the improvements, namely, the river of Des Moines, below the Raccoon Fork.

But it is not a question of new impression; nay, it has passed beyond opinion into action, and at this point of time it is more material to consider what has been done than what has been thought on the subject-matter. I wish, if possible, to find something firm to stand upon in what has been done.

In so far as regards selections already approved, whether by yourself or by Mr. Stuart, it is clear that the Government cannot undo that. What Mr. Stuart did, in this respect, with deliberation, what you did, without the questions involved being suggested to you, was, in each case, done by the competent legal authority, and binds the Government. One Secretary has no more lawful power to undo a thing lawfully done by his predecessor in a matter of grant than in a matter of account; no more right where a settlement is in favor of a third party than where it is in favor of the United States. When a thing is decided, and done by the head of a Department acting within the scope of his lawful authority, it can be revised by his successor only on the ground of mistake in a matter of fact, or the discovery and production of material new testimony. (Mr. Crittenden's opinion of December 28, 1852, MS.; see also Bank of Metropolis vs. The United States, XV Peters, p. 400; ex parte Randolph, II Brooker, p. 470.)

If the acts of Mr. Stuart and yourself, in this respect, had undertaken (as they do not,) to dispose of any contending rights of third parties, the latter would *of* had their remedy at law. But what you have done is final, as respects the United States. But have you erred in continuing to follow the line of action which your predecessor had prescribed, and which a Commissioner of Public Lands assumed as settled, in presenting to you for approval lists made out on the premises of the subsisting decision of Mr. Stuart? And if you erred (inadvertantly)
103 in thus approving selections made by the State above the Raccoon Fork, shall you now stop, and change the rule of action which Mr. Stuart has prescribed to the Commissioner? The answer to these questions is not included in the preceding conclusions. It is one thing to undo an act done, and quite another thing to cease to persevere in a previous line of action, as to acts of a continuous nature.

It might with much plausibility be argued that, while Mr. Walker's order was an opinion merely, and did not bind Mr. Ewing, so what Mr. Stuart did, though final as to lands actually approved, was but a precedent when a new list comes up, and may be rejected by you as a precedent, though it cannot be reversed or annulled as an act; that the dis-

position of the particular lands made by him is irrevocable, but the principle on which he did it is open to re-examination as respects any other lands in the same right claimed by the State, and that, in executing the same law, you are to execute it according to your own understanding of its force and effect. That may be so, and yet the contingency is not exactly of the application of a precedent to a new case; for the grant to Iowa is one thing, although it be composed of parts, or of new sets of parcels appertaining to the general whole. Mr. Stuart decided to adopt the opinion of Mr. Walker, which carried the grant above the Raccoon Fork, and he proceeded to execute, and did execute, that decision in part. And the true question is of the completion of the execution by you of what had been partially executed by Mr. Stuart. I think it must be a clear case of manifest illegality, in the work commenced and half executed by one Secretary, to justify the abandonment of it by his successor. Is the present such a case of palpable violation of law? That cannot be pretended in face of the opinions of Mr. Walker and Mr. Johnson, and the administrative acquiescence in those opinions on the part of Mr. Stewart. In my judgment, it is not for the good of the public service, while it is prejudicial, and sometimes grossly unjust to private interests concerned, for the Executive to break off things half done because of mere doubts of the legality of the decisions upon which commencement was made, or even the belief, that, upon better reflection at the outset, a different decision would have been rendered.

104 To indulge in such oscillation of action, under the influence of ordinary causes of perturbation, is not seemly on the part of the Government.

In the present case, of lands above the Raccoon Fork claimable by the State within its limits, twenty-six fifty-sixth parts, nearly half, the United States have already recognized as belonging to the State. I think you may, if you choose, well consider that a determination of the question proper to be acquiesced in by you as a settled fact of administration.

But this conclusion is placed by me on the ground only of a decision by Mr. Stuart, proper to be accepted by his successor, as constituting final action of the Government. It has been suggested in argument that inferences in favor of the present claim of the State may be deduced from a clause in the recent act making a grant of lands to the State of Iowa to aid in the construction of certain railroads in that State, (May 16, 1856.) The words are:

"That any and all lands heretofore reserved to the United States by an act of Congress, or in any manner by competent authority, for the purpose of aiding in any object of internal improvement, or for any other purpose whatever, be, and the same are hereby, reserved to the United States from the operation of this act, except so far as it may be found necessary to locate the routes of railroads through such reserved lands, in which case the right of way only shall be granted, subject to the approval of the President of the United States."

This provision is rather doubtfully worded. I suppose it intends to enact that the alternate sections reserved to the United States, for the sake of augmented sale-value, in case of any previous grants to the State for State objects, shall continue to be so reserved now, and shall not be taken as part of the lands subject to present grants to the State; and if the title still remains in the United States, the right of way is to be passed upon by the President of the United States.

Such an act of the President would apply still more distinctly to any case of actual continuing reservation to the United States for the uses of the United States. Concluding, at any rate, that the general object

is to protect the rights of the United States in any such case,
105 if it exists, it is urged that such a provision would have been superfluous, had not the Des Moines grant extended above the Raccoon Fork.

Well, suppose a construction which makes it superfluous. What then? There are very many superfluous provisions in the statutes. Of course no very cogent argument can be derived from that consideration. Moreover, if it was expressly said in the provision that the Des Moines grant was intended, still it would only operate as enactment ex majori cautela to guard against interferences in case the present controversy should be determined in favor of the State.

But the argument errs in supposing that no other grants of land have been made to the State of Iowa for the purpose of aiding in objects of internal improvements, or for any other purpose whatever. Various other grants of land have been made from time to time to the State. (See, exempli gratia, V Stat. at Large, pp. 453, 455; ibid., pp. 789, 790; VI Stat'e at Large, p. 810.) In a word, Congress, by this provision, said: "We have already made several grants of land to Iowa for one purpose or another, which may or may not have been located, and we do not design by this act to undertake to do what, indeed, we could not do if we would, that is, divest those grants from their lawful destination for the use of railroads, on account of which the present new grants are made to the State."

On the whole, therefore, it seems to me that this provision does not serve in any way to change the premises of the question, or the conclusions founded on those premises. Remains the question, on which of the two upper confluents of the Des Moines, the eastern or western, the land is to be taken? I conceive that point to be absolutely determined by the premises of my conclusions.

Mr. Walker's decision, as we have seen, was that the grant extends "on both sides of the river from its source to its mouth, but not into lands on the river in the State of Missouri."

Now the language of the act is explicit, granting to Iowa the alternate sections "in a strip of five miles in width on each side of said river" Des Moines; and the improvement is, in the equally explicit terms of the act, "from its mouth to the Raccoon Fork." But while
106 carrying the grant above the Raccoon Fork to the "source" of the Des Moines, where the improvement does not reach, he lops it off below, along the line of improvement by excluding "lands on the river in the State of Missouri." The explanation of which is, for the last twenty-five miles of its course the river Des Moines is the dividing line between the States of Missouri and Iowa. Missouri enjoys directly all the benefits of the improvement of the navigation of the river, but no lands in Missouri are to be comprehended in the grant, notwithstanding its terms are of lands on each side of the river, for the obvious and sufficient reason that the act contains no provisions adequate to enable Iowa to take, hold, and manage lands in the State of Missouri.

I conceive that the considerations which induced Mr. Walker to diminish by construction the scope of selections for twenty-five miles on one side of the river below the Raccoon Fork, show that in extending the grant above the "source" of the Des Moines, he intended to confine it within the limits of the State of Iowa.

Such was the understanding of the subject which guided the action of Mr. Stuart; the lists which he approved expressly referring to the north boundary of the State. And that is the utmost point to which, in my judgment, you can lawfully go, in case you acquiesce in and ac-

cept as a rule for yourself the opinion of Mr. Walker and the action of Mr. Stuart.

They unquestionably had before them the map of the State in which the eastern branch of the Des Moines was alone depicted, taking its rise in a lake on the boundary line of Minnesota. If they had knowledge of any western branch of *gaeater* or less length, they treated the eastern branch as the true Des Moines.

I think they must *of* done so, because they could not have done otherwise. Mr. Walker did not say, and could not have said, that the grant extends into Minnesota. If he had apprehended any such consequence of deciding that the grant extends above the Raccoon Fork, he could not have made this decision, but must have referred the State, as Mr. Ewing afterwards did, to Congress. That is plainly to be inferred from the consideration that the act of Congress cannot be
107 executed, if it be so construed as to assume that the grant extends into Minnesota. It contains no provisions in virtue of which one State is to hold public domain within the limits of another State or inchoate State.

Impressed by the force of this consideration, Mr. Walker excluded from the purview of the grant the sand on one side of the river, for the length of twenty-five miles, though plainly comprehended by the letter of the act.

Of course it availed nothing to say that when the grant was made, the part of Minnesota affected was included within the limits of the State of Iowa, and that therefore the letter of the law extends the grant beyond the northern line of the State. So, also, the letter of the law comprehends lands in Missouri. But the letter of the law, in the former case as well as in the latter, must yield to the legal objection, that without apt language of enactment to that express effect, it cannot *not* be inferred from other words of enactment that a grant of lands to one State extends into another State, (including in such phrase inchoate State.)

Moreover, we are not dealing with the import of the grant on its face, or as construed while Iowa was a Territory and included a part of the present Minnesota.

If we go back to that day, we find the grant construed and accepted on both sides as not extending above the Raccoon Fork, and of course not involving any possible question of the upper course of the Des Moines. If we now stood there, at that point of time, my decision in the case would be precisely the reverse of what it now is in effect, though precisely the same in form and tenor, that is, to accept as final the previous action of the Executive, (including President Polk's proclamation,) which limited the grant to the Raccoon Fork. I should be the more fortified in such a conclusion, because the maxim stare decisis would then have applied to the case without qualification or doubt; and also because, if the naked question of the construction of the statute were before me, as it would then have been, my judgment would have been satisfied with the construction put upon it in that early stage of the case by the United States, and not objected to by the State.

108 While, at that time, the idea of acquiescing in the thing decided would have confined the grant to the Des Moines below the Raccoon Fork, the same idea requires that the grant, though carried by your predecessor above the Raccoon Fork, should yet be confined within the limits of the State of Iowa. That is the decision

whose authority is invoked as controlling you, and which, if you accept at all, you accept on the final decision of the whole matter.

If you throw up the decision of Mr. Stuart, founded on Mr. Walker's opinion; if you come to the conclusion that this is not to be acquiesced in as final administrative action; if you go behind it, then you come at once per saltam to the state of the question as it stood anterior to the 2d of March, 1849. At that point, we shall have all the arguments of *the* Mr. Attorney General Johnson in favor of the finality of Executive action to counsel acquiescence in the then existing practical construction of the law. If, passing over this consideration, we proceed to reason about the meaning of the law, we do not have the advantage of the elaborate arguments on that point which have since been officially presented by Mr. Johnson, and also by Mr. Attorney General Crittenden. But all those arguments would possibly occur to us, and we might be the more easily brought to the same conclusion with the latter by fresher contemporaneous knowledge of the legislative history of the act of Congress.

In fine, after the most mature reflection, it seems to me that only two tenable alternatives present themselves in the case: One, to stand on the action of Mr. Walker and Mr. Stewart, not as legal doctrine, but as decision; and the other, rejecting all the intermediate vacillations of opinion, to go back to the original action, and stand on that as decision, and not as legal doctrine. Either of these conclusions would be perfectly advisable, according to the rules of law, for if it be unlawful to go behind executive decisions, then the last decision in the case was a violation of law, and should be rejected because of its illegality. I have hesitated much on the question whether that be not the true view of the subject, but, for reasons already suggested, have come to the conclusion, on the whole, to advise you to stand on the last
109 decision, which gives to the State the lands along the course of the Des Moines up to the northern boundary of the State. There is a collateral consideration which has weight with me. It is discreditable to the Government that its views of a law and its consequent action should be shifting about like a weathervane, as they have done in this case. I wish, if it be possible, to stop that. I think the alternative lines of duty, either of which you may lawfully pursue, and beyond which there is no other apparently lawful course, indicate the means of producing the desirable result of now concluding the subject, in so far as regards the Executive.

I advise, therefore, that you propose to the State of Iowa and its assigns, to acquiesce in and accept the decisions of Mr. Stuart as final, and to approve selections accordingly; provided the State, or its assigns, will themselves agree to acquiesce in and accept that decision as final. If they refuse to treat that decision as final, they cannot expect you to do so. They should be bound if you are. If they consent to enter into satisfactory stipulations of contract to that effect, you can with safety award to them the residue of the claim, up to the northern boundary of the State. If they decline this proposition, then it is clear, in my opinion, that you are completely discharged from any obligation to act on the premises of Mr. Walker and Mr. Stuart; nay, it becomes impossible for you to do so, for the very supposition of this alternative is, that the State of Iowa denies the finality of the decision, that is, denies, so far as regards her, it is a decision, and if not a decision for her, then it is not one for the United States.

In that event you are forcibly thrown back on the first decision of the Government—that from which Mr. Walker departed—and must, in

my opinion, absolutely refuse to approve any more selections above the Raccoon Fork; the effect of which would probably be to remit the parties to Congress, which alone has the full power to cut the Gordian knot in which this subject has been tangled up, by reason of the inexplicitness of the original act of Congress, and the uncertainties regarding its meaning, which have embarrassed the action of the successive administrators of the Government.

I am, very respectfully,

C. CUSHING.

Hon. R. McCLELLAND,
Secretary of the Interior.

110 On the 9th of June, 1856, the Secretary of the Interior made the following communication to the Commissioner of the General Land Office:

DEPARTMENT OF THE INTERIOR,
June 9th, 1856.

SIR: I return herewith the papers in reference to the grant for the improvement of the Des Moines River, which accompanied your report of the 24th of March, and enclose therewith several letters and arguments which have been received here since the date of your report.

Having submitted the subject to the Attorney General for his opinion upon the questions involved, I enclose a copy of such opinion, furnished me under the date of the 29th ultimo, and also a letter, under date of the 5th inst., from the Hon. Reverdy Johnson, (the attorney for the claimants under the grant,) in regard to the conditions upon which subsequent approvals, up to the limits of the State of Iowa, are recommended by the Attorney General to be made.

In the subsequent action upon selections not yet approved, I have concluded to be governed by the advice of the Attorney General, as contained in the paragraph near the close of such opinion, beginning with the words, "I advise, therefore, that you propose to the State of Iowa and its assigns," and ending with "You can with safety award to them the residue of the claim up to the northern boundary of the State."

It will be perceived from the endorsement of Mr. Johnson's letter, above referred to, that he has undertaken to procure the assent of the State and its assigns, to the conditions referred to, so that the necessity is obviated of any direct proposition to that effect on the part of the Department; but no further action will be taken until the parties are heard from on this point.

In the certificate of approval, hereafter prepared for my signature on any lists submitted, the fact should be stated that, the approval being based on the prior action of the Department, and upon the ground that the grant is to be confined to the northern boundary of the State of Iowa, the acceptance by the State and its assigns would be considered an acquiescence on their part, in this limit, and an abandon-
111 ment of all claim beyond it, as it is upon this basis alone I can feel justified in yielding my assent to the claim preferred.

Should the assent of the parties be given in writing, the certificate of approval will be so varied from the language above as to conform to that state of facts, but without losing sight of the real groundwork of my assent to the approval.

Respectfully, your obedient servant,

R. McCLELLAND, *Secretary.*

The Hon. THOMAS A. HENDRICKS,
Commissioner of the General Land Office.

The board of public works, not feeling authorized to enter into any compromise of that nature, brought the matter before the general assembly, and the following act was passed, which took effect on the 14th day of April, 1858:

An act appointing a commissioner to procure the lands granted for improving the navigation of the Des Moines River to be certified to the State.

SECTION 1. *Be it enacted by the general assembly of the State of Iowa*, That Charles Mason, of Des Moines County, is hereby appointed a commissioner, whose duty it shall be to do all acts in behalf of the State which may be necessary to procure the lands belonging to the grant made to the then Territory of Iowa, by an act of Congress, approved August 8th, 1846, for the improvement of the navigation of the Des Moines River, in said Territory, to be certified and set apart to said State by the proper department of the General Government, and any act or agreement as to the amount of land to which the State may be entitled under said act of Congress, made or concluded by said agent, is hereby ratified and confirmed.

SEC. 2. That the State of Iowa shall not be liable in any manner for any damages growing out of any act or agreement of said agent hereby appointed, nor shall the State be held liable for any expense in any manner for the salary or per diem of said agent.

112 SEC. 3. This act to take effect and be in force immediately after its publication in the Iowa State Journal and Iowa Weekly Citizen.

Approved March 22d, 1858.

The following correspondence then took place between the commission and the Secretary of the Interior:

WASHINGTON, *April 30th*, 1858.

SIR: In our recent conversation relative to the settlement of the controversy in regard to the extent of the Des Moines River grant, you expressed a readiness to abide by the proposition of your immediate predecessor, founded upon the opinion of the late Attorney General, dated May 29th, 1856. That proposition was, that the decision of Mr. Secretary Stuart, of 29th October, 1851, founded on that of Mr. Walker's, of March 2, 1849, should be adopted as final and conclusive.

As agent for the State of Iowa, with full power over this subject, I am willing to accept this proposition thus far. But the late Attorney General has arrived at a conclusion that this rule will confine the grant to the present limits of the State of Iowa, and one branch of the proposition presented by your predecessor has accordingly been, that the State should relinquish all claims to lands north of her present boundaries. Fully satisfied that a fair interpretation of the decisions of Messrs. Walker and Stuart would lead to no such conclusion, and that the opinion ot the late Attorney General in this respect was palpably erroneous, mainly in consequence of mistakes in regard to matters of fact, I desire this branch of the subject to remain open, and that I be permitted to show the truth of what I now state, in such a manner as you may think reasonable and proper.

The State of Iowa desires protection in all her just claims, and she will ask for nothing more. If upon a proper examination it be found that a fair construction of the decision of Mr. Stuart, founded on that of

Mr. Walker's, will limit the grant to the present boundaries of the
113 States, I will, at once, on the part of the State, relinquish all claim to such lands as lie in Minnesota, and thus terminate this long controversy.

Yours, very respectfully,

CHA'S MASON,
Agent and Attorney for Iowa.

Hon. JACOB THOMPSON,
Secretary of the Interior.

DEPARTMENT OF THE INTERIOR,
Washington, May 7th, 1858.

SIR: I have to acknowledge the receipt of your communication of the 30th ultimo, relative to the settlement of the controversy as to the extent of the Des Moines River grant.

The decision of my immediate predecessor of the 9th of June, 1856, I regard as a proposition made to the State of Iowa for a final adjustment, and your present communication is not an acceptance of the proposition on the part of the State, when it is considered that nearly two years have elapsed and no formal acceptance has, in the meantime, been presented here. If this be the only communication you have to make, I feel authorized to regard your letter now before me as an authoritative rejection of that proposition.

Very respectfully, your obedient servant,

J. THOMPSON, *Secretary.*

Hon. CHARLES MASON,
Agent for the State, present.

On the 10th of May, 1858, the following appeal was taken to the President of the United States, from the decision of the Secretary of the Interior:

Des Moines River grant.—Appeal from the Secretary of the Interior.

WASHINGTON, *May 10th*, 1858.

SIR: The undersigned *by* leave to present to your excellency the following statement of facts, and to ask your interposition to prevent what he believes an injury, which will otherwise be inflicted upon the State of Iowa.

On the 8th of August, 1846, a grant was made to the then Territory of Iowa of lands lying along the Des Moines River, to aid in im-
114 proving the navigation of a portion of that stream upon certain terms and conditions therein set forth. These terms and conditions were assented to by the proper authorities of that Territory, and have ever since been strictly observed.

Shortly after the making of the grant, a difference of opinion arose as to its extent; some supposing it to reach no higher up the river than the Raccoon Fork, which limits the extent of the proposed improvement, while on our part it was held to extend to the source of the river.

In February, 1848, the Commissioner of the General Land Office informed the secretary of the board of public works that the grant embraced "the alternate sections within five miles of the Des Moines River, throughout the whole extent of that river, within the limits of Iowa." (See extract of letter hereto appended, marked A.)

But in June of that year, for reasons unknown to the undersigned, a portion of the lands lying above the Raccoon Fork was proclaimed for

sale, and was actually offered at public auction in September following. A part of the lands so offered was sold on that day, and the remainder was, by law, subject to private entry afterwards.

To prevent these lands from being entered in this manner, the board of public works remonstrated. Our delegation in Congress, soon after their arrival in Washington, in January, 1849, earnestly remonstrated and appealed from the decision of the Land Office to the head of the Department, who, on the 2d of March following, decided broadly in favor of the State, holding that the grant extended to the source of the Des Moines River.

A copy of this decision was communicated to the General Land Office for its "information and government." (See copies of these documents hereto appended, marked B and C.)

This decision controlled the action of the Land Office for more than a year, till, in April, 1850, Mr. Ewing, the then Secretary of the Interior, reversed it, and limited the grant to the Raccoon Fork. From this decision an appeal was taken to the President. He referred the subject to Attorney General Johnson, who, on the 19th of July, decided
115 in favor of the State; but just before that decision was promulgated, President Taylor died.

Under Mr. Fillmore's administration the question again arose, and was referred by Mr. Secretary Stuart to Attorney General Crittenden, who coincided with Mr. Ewing in the opinion that the grant extended no higher than the Raccoon Fork. Mr. Stuart at first adopted this view of the matter, but finally changed his decision, and concluded to allow the entire claim of the State. (See a copy of his decision hereto appended, marked D.)

Under this decision, lands lying above the Raccoon Fork were certified to the State at different times, both by Mr. Stuart and by his successor, Mr. McClelland, amounting to about 260,000 acres, until, on the 21st of March, 1856, nearly four years and a half after the decision of Mr. Stuart, above referred to, we were again overwhelmed with astonishment and vexation, by a decision of the General Land Office, to the effect that the grant extended no higher than the Raccoon Fork.

On an appeal to the Secretary of the Interior, the advice of the Attorney General was again sought, which was given in an opinion promulgated on the 29th of May, 1856. The conclusion to which Mr. Cushing arrives, is, that although the original grant did not rightfully extend above the Raccoon Fork, still, that the Government was now fully committed to the more liberal construction, and it was too late to retrace its steps. He says, among other things,: "I think that it must be a clear case of manifest illegality in the work commenced and half executed by one Secretary, to justify the abandonment of it by his successor. Is the present such a case of palpable violation of the law? That cannot be pretended in the face of the opinions of Mr. Walker and Mr. Johnson, and the administrative acquiescence in those opinions on the part of Mr. Stuart." (See pamphlet opinion, herewith filed, page 8.)

He therefore advises the Secretary to propose to the State of Iowa to acquiesce in and accept the decision of Mr. Stuart as final, and to approve selections accordingly, provided the State will agree to acquiesce in and accept the decision as final. (Ib., page 12.)

But the Attorney General also came to the conclusion that this
116 decision limits the grant within the present boundaries of the State, which do not include the whole river, although it was all embraced within the Territory of Iowa at the time the grant was made; and the late Secretary of the Interior, in acquies'ing in the above re-

commendation, directs that no more lands should be certified to the State, unless she should directly or indirectly agree to limit her claims to her own boundaries. (See copy of his communication hereto appended, marked E.)

Since that time no more lands have been certified, and no such assent has been given by the State. Having carefully examined the opinion of Mr. Cushing, as well as all the other papers and documents in the case, the undersigned has arrived at the firm conclusion that the decision of Mr. Stuart does not contemplate a limitation of the grant to the State boundaries, and that in his conclusion to that effect the Attorney General has committed many fundamental errors, not only of logic, but also of fact, among which are the following:

1st. He takes the ground that "the act of Congress cannot be executed, if it be so construed as to assume that the grant extends to Minnesota. It contains no provisions, in virtue of which our State is to hold public domain within the limits of another State, or inchoate State." (See pamphlet opinion, herewith filed, page 10—a.) He here overlooks the important truths, that the States do not derive their power to hold real estate from any act of Congress; that this is a part of that sovereign power which is inherent, and is not limited by any constitutional restriction; that the right to land, as a mere proprietor, is a very different thing from a claim to civil jurisdiction within another State; and that nothing is more common in this country than for one government (either Federal or State) to hold lands within the limits of another.

2d. He further says: "Impressed by the force of this consideration, Mr. Walker excluded from the purview of the grant the land on one side of the river for the length of twenty-five miles, though plainly comprehended by the letter of the act." (See pamphlet opinion, page 10—b.) This has reference to the decision of Mr. Walker, which declares "that the grant in question extends on both sides of the river, from its source to its mouth, but not to lands on the river in the State of Missouri."

117

Mr. Cushing could not have certainly remembered that the act of August 8th, 1846, making the grant, requires the land "to be selected within the said Territory" of Iowa. This condition prevents us from going into Missouri, but does not exclude us from Minnesota, which was then a portion of Iowa.

3d. He also says: "Such was the understanding of the subject which guided the action of Mr. Stuart, the lists which he approved expressly referring to the limit of the north boundary of the State." (See pamphlet opinion, page 10—c.) This is a downright mistake in point of fact, as will be shown beyond all controversy, if a proper opportunity is allowed, leaving not the slightest foundation for this conclusion of the Attorney General in relation to the scope of Mr. Stuart's decision.

The State is willing to accept of that decision as a finality, to whatever conclusion that may lead us. In fact, we regard ourselves as entitled to claim this as a right, involving a corresponding obligation on the part of the Federal Government, and such seems to have been the opinion of Mr. Cushing. What just government would seek to prescribe terms as a condition, for a performanre on its part of a simple act of duty? Shall we be refused an acknowledged right, unless we will submit to what we believe a manifest wrong? The proposition presented embraces two distinct matters: 1st, the rule; and, 2d, its application and extent. We accept the former; we wish to discuss the latter.

The action of the late Secretary was not a final decision. It contemplated that a proposition should be made to the State. This presupposes the right of the State to accept, or reject, or to suggest modifications. Especially does it allow of a counter proposition for the correction of any palpable errors that may have been committed.

Under this impression, instead of unqualifiedly accepting or rejecting the proposition presented, the undersigned suggested a modification in accordance with the views hereinbefore expressed. (See copy of letter hereto appended, marked F.) In doing this, he was not aware
118 of going beyond the bounds of propriety. He regarded the parties to this controversy as two independent powers, acting through their authorized agents, standing for the time upon the same level, and mutually attempting by amicable means to give effect to the will of their common superior, the law. If this be an error of judgment, it is not one of intention.

Entertaining such views, he was not a little surpised at receiving the reply hereto appended, (marked G,) which effectually closes the door to all further correspondence on the subject, and leaves no avenue of hope except that to which he now resorts.

As to the negligence on the part of the State, upon which some stress is laid by the Secretary in his late letter, it may be proper to observe that, although nearly two years have elapsed since the decision of the late Secretary, still that decision has never been officially communicated to the authorities of the State to this day. The agents of a company who had taken a contract from the State, seem to have been apprized of that decision; but as far as we now know or believe, the State authorities never knew of that decision, even by rumor, until sometime during the past year.

At the first session of the legislature thereafter, an act was passed appointing the undersigned a commissioner, with full power over this subject. That law took effect on the 14 of April last, previous to which time no person on earth had authority to act definitely on this subject. Within sixteen days thereafter he had traveled from Iowa, examined the papers of the case, and filed his assent to the substantial portion of the proposition of Secretary McClelland. It will certainly be surprising if there is such negligence on the part of the State as to weigh against us in the decision of this important question.

The undersigned is firmly convinced that, by a just and legal construction of the act of August 8th, 1846, the grant would extend to the source of the Des Moines River. This conviction is confirmed by the unqualified opinion of many eminent jurists, among whom are the late Col. Benton, Mr. Buell, of Michigan, and Chancellor Walworth, and Judge Bronson, of New York. Copies of their opinion may be
119 found in the report of the commissioner and register of the Des Moines River improvement, herewith filed, pages 30 to 40 inclusive. At all events the decisions of Mr. Walker and Mr. Stuart, followed by the action and acquiescence of the Government for so many years, entirely put an end to any question or doubt that otherwise might have existed; under these circumstances, he does not feel justified in abandoning any part of these lands while a hope remains of securing the rights of the State. Resort would at once be had to the legal tribunals, but for the length of time necessary to obtain a final decision. Such are our present necessities that the lands below the State boundary would now be of more value than the whole at the end of a litigation which, at least, will require several years.

To show the sincerity of the confidence above expressed, a proposi

tion has been made to the Secretary (and rejected) to the effect that the lands lying within the State, and as to which there is no dispute, shall be certified at once, and that immediate steps be taken to bring the question of title to the remainder before the Federal courts. By such an arrangement, if we are not legally entitled to the land in Minnesota, we shall not obtain it. If we are so entitled, should the Government object to our receiving it?

Except in this single instance, it seems to have been the uniform practice of the Federal Government to construe all grants made by Congress to the States with liberality. At all events it is believed that no other State has ever been harrassed and tantalized as ours has been in this instance.

When the decision of Mr. Walker, of March 2d, 1849, had been made, the State felt justified in forming her plans accordingly. A scale of improvement was adopted, corresponding to the fund at our disposal; and contracts were made for completing the projected work. The decision of Mr. Ewing paralyzed the power of the State, rendered her unable to perform her engagements with contractors, caused the works in progress to be suspended, and it was at a cost of nearly $50,000 that the claims of contractors, growing out of the suspension, were finally adjusted. The indirect injuries resulting from freshets and other
120 causes during the long suspension, thus rendered necessary, was far greater in amount, but is not capable of being computed.

Again, when, after the delay of a year and a half, Mr. Stuart finally affirmed the decision of Mr. Walker, and a large amount of lands above the Racoon Fork had been certified to the State, we certainly had reason to apprehend no further disappointment. The works were again commenced; and finally, on the 9th of June, 1854, a contract was made with an eastern company for the completion of the entire improvement to the Raccoon Fork. Within two years thereafter, and just as the company were prepared to prosecute their work with vigor, comes the decision of March 21st, 1856, which entirely crippled all their future operations, frustrated the purposes of both the parties to that contract, and gave rise to a virulent controversy between them, which, for a while, absorbed their attentions, and diverted their efforts from all matters connected with the extent of this grant. Again, the interests of the State had to be sacrificed, and at an expense of several hundred thousand dollars to the State. The contract has finally been set aside by mutual consent.

And now, while we are informed by the law officer of the Government that we have a just right to insist upon that decision, as to the grant, which has been so often given and so long acquiesced in by the proper authorities of the Federal Government, and while we assent to that decision and claim its benefits, we are informed that, unless we also assent to a construction thereof which we believe wholly repugnant to its spirit and effect, our express assent will be regarded and treated as an unqualified rejection.

We believe this to be wholly unreasonable, and therefore seek relief through the only adequate means within our reach.

In the statements and observations above made, the undersigned has endeavored to confine himself strictly to those matters which are necessary to enable your excellency to decide the point last made before the Secretary of the Interior; that is say, whether we must unqualifiedly accept or reject the decision of Mr. Stuart, coupled with the construction given it by Mr. Cushing, or whether we may obtain a divi-

121 sion of the subject, accept the decision, and test its scope and meaning in some just manner. Should the decision on this question be in our favor, or should the merits of the case in any other way be opened for discussion before any impartial tribunal, and opportunity to file an argument-in-chief is respectfully solicited.

Yours, very respectfully.

CHA'S MASON.

To his Excellency, the PRESIDENT.

APPENDIX.

A.—*Extract from a letter from the Commissioner of the General Land Office to the secretary of the board of public works, dated February, 23d*, 1848:

"A question has arisen as to the extent of the grant made to Iowa by the act of 8th of August, 1846, and the opinion of this office has been requested on that point. By the terms of the law the grant is of an equal moiety, in alternate sections of the public lands, (remaining unsold and not otherwise disposed of, incumbered or appropriated, (in a strip five miles in width, on each side of said river, to be selected within said Territory, &c., &c., and the proceeds are to be applied in the improvement of the navigation of that river from its mouth to the Raccoon Fork; hence the State is entitled to the alternate sections within five miles of the Des Moines River, throughout the whole extent of that river within the limits of Iowa."

B.

TREASURY DEPARTMENT, *March 2d*, 1849.

GENTLEMEN: I have the honor to acknowledge the receipt of your communication of 8th of January last, and accompanying papers, on the construction of the act of Congress "granting lands to the Territory of Iowa, to aid the improvement of the navigation of the Des Moines River, in said Territory," approved 8th August, 1846. I concur with you in the views contained in your communication, and am of
122 opinion that the grant in question extends, as therein stated, on both sides of the river from its source to its mouth, but not to lands on the river in the State of Missouri. I have transmitted your communication and accompanying papers, with a copy of this letter to the Commisioner of the General Land Office.

I have the honor, &c.

R. J. WALKER,
Sec. of Treasury.

Messrs. A. C. DODGE, G. W. JONES, L. LEFFLER, W. THOMPSON.

C.

TREASURY DEPARTMENT, *March 2d*, 1849.

SIR: For your information and government on the subject which it refers, I enclose a copy of a letter addressed by me, under this date, to members in both Houses of Congress from the State of Iowa, with reference to the construction of the act of the 8th August, 1846, granting certain lands to the Territory of Iowa, to aid in the improvement of the navigation of the Des Moines River.

I also enclose the letter to which the within is a reply, and accompanying papers.

Very respectfully,

R. J. WALKER.

R. M. YOUNG, Esq., *Commissioner.*

D.

DEPARTMENT OF THE INTERIOR,
Washington, Oct. 29th, 1851.

SIR: I herewith return all the papers in the Des Moines case, which were recalled from your office about the first of present month.

I have considered and carefully reviewed my decision of the 26th of July last, and in doing so, find that no decision which I can make will be final, as the question involved partakes more of a judicial than of an executive character, which must ultimately be determined by the judicial tribunals of the country; and although my own opinion on
123 the true construction of the grant is unchanged, yet, in view of the great conflict of opinion among the executive officers of the Government, and also in view of the opinions of several eminent jurists, which have been presented to me in favor of the construction contended for by the State, I am willing to recognize the claim of the State and to approve the selections, without prejudice to the rights, if any there be, of other parties, thus leaving the question as to the proper construction of the statute entirely open to the action of the judiciary.

You will please, therefore, as soon as may be practicable, submit for my approval such lists as have been prepared, and proceed to report, for like approval, lists of the alternate sections claimed by the State of Iowa above the Raccoon Fork, as far as the surveys have progressed, or may hereafter be completed and returned.

I am, sir, very respectfully, your obedient servant,

ALEX. H. H. STUART, *Secretary.*

The COMMISSIONER OF THE GENERAL LAND OFFICE.

E.

DEPARTMENT OF THE INTERIOR, *June 9th,* 1856.

SIR: I return herewith the papers in reference to the grant for the improvement of the Des Moines River, which accompanied your report of the 24th of March, and enclose therewith several letters and arguments which have been received here since the date of your report.

Having submitted the subject to the Attorney General for his opinion upon the question involved, I enclose a copy of such opinion, furnished me under date of the 29th ultimo, and also a letter under date of the 5th inst., from the Hon. Reverdy Johnson (the attorney for the claimants under the grant), in regard to the conditions upon which subsequent approvals, up to the limits of the State of Iowa, are recommended by the Attorney General to be made.

In the subsequent action upon selections, not yet approved, I have concluded to be governed by the advice of the Attorney General as contained in the paragraph near the close of such opinion, begin-
124 ning with the words, "I advise, therefore, that you propose to the State of Iowa and its assigns," and ending with "you can with safety award to them the residue of the claim up to the northern boundary of the State."

It will be perceived, from the endorsement on Mr. Johnson's letter, above referred to, that he has undertaken to procure the assent of the State and its assigns to the conditions referred to, so that the necessity is obviated of any direct proposition to that effect on the part of the Department; but no further action will be taken until the parties are heard from on this point.

In the certificate of approval, hereafter prepared for my signature on any lists submitted, the fact should be stated that the approval being based upon the prior action of the Department, and upon the ground that the grant is to be confined to the northern boundary of the State of Iowa, the aceptance by the State and its assigns would be considered an acquiescence, on their part, in this limit, and an abandonment of all claim beyond it, as it is upon this basis alone I can feel justified in yielding my assent to the claim preferred.

Should the assent of the parties be given in writing, the certificate of approval will be so varied from the language above as to conform to that state of facts, but without losing sight of the real groundwork of my assent to the approval.

Respectfully, your obedient servant,

R. McCLELLAND, *Secretary.*

The Hon. THOMAS A. HENDRICKS,
Commissioner of the General Land Office.

F.

WASHINGTON, *April 30th*, 1858.

SIR: In our recent conversation relative to the settlement of the controversy in regard to the extent of the Des Moines River grant, you expressed a readiness to abide by the proposition of your immediate predecessor, founded upon the opinion of the late Attorney General, dated May 29th, 1856. That proposition was, that the decision of Mr. Secretary Stuart of 29th October, 1851, founded on that of Mr. Walker's of March 2, 1849, should be adopted as final and conclusive.

125 As agent for the State of Iowa, with full power over this subject, I am willing to accept this proposition thus far. But the late Attorney General has arrived at the conclusion that this rule will confine the grant to the present limits of the State of Iowa, and one branch of the proposition presented by your predecessor has accordingly been, that the State should relinquish all claim to lands north of her present boundaries. Fully satisfied that a fair interpretation of the decisions of Messrs. Walker and Stuart would lead to no such conclusion, and that the opinion of the late Attorney General in this respect was palpably erroneous, mainly in consequence of mistakes in regard to matters of facts, I desire this branch of the subject to remain open, and that I be permitted to show the truth of what I now state, in such a manner as you may think reasonable and proper.

The State of Iowa desires protection in all her just claims, and she will ask for nothing more. If upon a proper examination it be found that a fair construction of the decision of Mr. Stuart, founded on that of Mr. Walker's will limit the grant to the present boundaries of the State, I will at once, on the part of the State relinquish all claim to such lands as lie in Minnesota, and thus terminate this long controversy.

Yours, very respectfully,

CHA'S MASON,
Agent and Attorney for Iowa.

Hon. JACOB THOMPSON,
Secretary of the Interior.

G.

DEPARTMENT OF THE INTERIOR,
Washington May 17th, 1858.

SIR: I have to acknowledge the receipt of your communication of the 30th ultimo, relative to the settlement of the controversy as to the extent of the Des Moines River grant.

The decision of my immediate predecessor of the 9th of June, 1856, I regard as a proposition made to the State of Iowa for a final adjustment, and your present communication is not an acceptance of the proposition on the part of the State. When it is considered that
126 nearly two years have elapsed and no formal acceptance has, in the meantime, been presented here, if this be the only communication you have to make, I feel authorized to regard your letter now before me as an authoritative rejection of that proposition.

Very respectfully, your obedient servant,
J. THOMPSON, *Secretary*.

Hon. CHARLES MASON,
Agent for the State, present.

The President referred the subject to the Attorney General, who delivered the following opinion:

ATTORNEY GENERAL'S OFFICE, *Nov. 22d*, 1858.

SIR: On the 18th of August, 1846, Congress made a grant to the Territory of Iowa in the following words: "That there be, and hereby is, granted to the Territory of Iowa, for the purpose of aiding said Territory to improve the navigation of the Des Moines River from its mouth to the Raccoon Fork (so called) in said Territory, one equal moiety in alternate sections of the public lands (remaining unsold and not otherwise disposed of, incumbered, or appropriated,) in a strip five miles in width on each side of said river, to be selected within said Territory by an agent or agents to be appointed by the governor thereof, subject to the approval of the Secretary of the Treasury of the United States."

The question arising on the construction of this law has been debated for upwards of twelve years without being settled. You ask my opinion upon it now, as if nothing had ever been said or done about it before. I do not doubt that you are right in regarding it still as *sub judice* and undetermined, open as it ever was to the operation of the principles which ought to have governed it originally. But in forming our judgment upon it we cannot help looking up with becoming respect to the opinions of the eminent men who have heretofore had it under consideration. The act gives to Iowa, for the purpose of improving the Des Moines from the mouth to the Raccoon Fork, certain lands on both sides of the river. Does that mean that the Territory shall have the prescribed quantity of lands on all parts of the river up to its source, or is the grant, like the improvement it aids, confined to that part of the river which runs below the fork? The simple reading of the
127 act leaves in my own mind the impression that no lands above the fork were meant to be included. Taking into consideration nothing but the words of the grant, I cannot but think it probable that the person who drew it understood it himself, and intended that others should understand it, as giving merely a moiety of the unappropriated public lands which lay within five miles of the river, between its mouth

and the fork. I believe too that such words in such a collocation would naturally be supposed by most members of Congress to concede nothing more; nor is there, in my opinion, any established rule of interpretation, which forbids us to say that the words, "from its mouth to the Raccoon Fork," qualify and limit both the grant and the improvement. The lands given and the work to be done are described in the same sentence, and a limitation which is not necessarily confined to one may well be applied to both without being repeated. There is an argument, to be sure, and a specious if not a strong one, on the other side. But this does not destroy nor explain the opposing view; it only shows that something may be said on both sides. The grant is certainly obscure in its phraseology. A person whose faculties are sharpened by an interest in the claim can see it extending to the head-waters of the Des Moines plainly enough, while an advocate of the other side might perceive with equal clearness the construction which stops it at the Raccoon Fork; nay more, it has actually divided the judgment of the ablest men and the soundest lawyers in the service of the Government. Mr. Walker and Mr. Johnson could not have been in favor of the larger interpretation, unless there had been cogent and good reasons for it. On the other hand, Mr. Ewing, Mr. Crittenden, and Mr. Cushing would not have set their faces against it, if opposite considerations of great weight had not been presented to them. And surely, if it had been a tolerably plain case either way, Mr. Stuart and Mr. McClelland would not have kept it poised in their scales for seven years without determining where the preponderance was; much less would either of them have offered to settle it by a compromise. In truth, this law has been treated for a dozen years as no plainly-written law could be treated.

128 But, for my own part, I have not the least doubt about it; my reason may seem paradoxical, but the very obscurity of the grant, in my judgment, makes it clear. It is out of these doubts that certainty grows. In every doubtful case we know very well what we ought to do, as soon as we ascertain which party is entitled to the benefit of the doubt. We shall see who is entitled to it here.

It is well settled, that all public grants of property, money, or privileges are to be construed most strictly against the grantee. Whatever is not given expressly, or very clearly implied from the words of the grant, is withheld. This is most especially true of legislative grants, and for very good reasons the rule ought to be adhered to with unyielding firmness. We all know the fact, and we are not bound to seem ignorant of it, that gifts like these are often caused by private solicitations and personal influence. The bills are almost universally drawn up by their special friends, and may be made ambiguous on purpose to disarm their opponents or put suspicion asleep. If you let the grantees have the advantage of the ambiguity which they themselves put into their own laws, many of them will get a meaning which Congress never thought of. Acts which were supposed to have but little in them when they passed will expand into very large dimensions afterwards. An ingenious construction will make that mischievous which was intended to be harmless. The remedy for these evils—and they are evils to the public morals as well as to the Treasury—is to let all men know that they can get nothing from the United States except what Congress has chosen to give them, in words so plain that their sense cannot be mistaken.

I do not know any reason for suspecting the slightest bad faith in this case. But it comes within a general rule which must be maintained in order to prevent a general mischief. It should, however, be remembered, that the grant was construed at the Land Office, immediately

after its passage, to extend no further than the Fork, and this was acquiesced in by the State authorities for upwards of two years.

The idea that it went to the source of the river was certainly
129 an after-thought. I do not say that this estops them now, or that their mistake, if it had been a mistake, should prevent them from getting all that was given. But when this law was on its passage it would have been easy to say, that half the land on each side of the river up to its source should belong to the Territory; not being said, we cannot presume that it was intended. A word or two would have put the meaning beyond the reach of a doubt; but the ambiguity was left in the bill, and leaving it there was the fault of its framers and its friends. They, and not the United States, must suffer the consequences.

Very respectfully yours, &c.,

J. S. BLACK.

Hon. JACOB THOMPSON,
Secretary of the Interior, Washington, D. C.

130 EXHIBIT VIII.

No. 661.—*Notice respecting certain lands in the State of Iowa.*

Notice is hereby given that the lands along the Des Moines River, in Iowa, and within the claimed limits of the Des Moines grant in that State, above the mouth of the Raccoon Fork of said river, which have been reserved from sale heretofore on account of the claim of the State thereto, will continue reserved, for the time being, from sale, or from location, by any species of scrip or warrant, notwithstanding the recent decision of the Supreme Court against the claim.

This action is deemed necessary to afford time for Congress to consider, upon memorial or otherwise, the *the* case of actual bona fide settlers, holding under titles from the State, and to make such provision, by confirmation or adjustment, of the claims of such settlers as may appear to be right and proper.

JOS. S. WILSON,
Commissioner of the General Land Office.

GENERAL LAND OFFICE, *May 18th*, 1860.

Such notice was at once posted in a conspicuous place in said land offices in Iowa, and so remained posted until the close of the year 1863.

On 25th May, 1860, W'm T. Steiger, an agent in behalf of the Dubuque & Pacific Railroad Company, filed in the General Land Office a list of lands laying within the claimed limits of the Des Moines River grant above the Raccoon Fork, and claimed to select some of them for said railroad company, under the act of 15th May, 1856, granting lands to Iowa for railroad purposes.

The Commissioner of the General Land Office, in June, 1860, acknowledged the receipt of the list, and added:

131 "The tracts in said list are above the Raccoon Fork, and within the lands that had been selected under the Des Moines River grant, by act of 8th August, 1846, and in view of the recent decision of the Supreme Court affecting a title to lands under that grant above the Fork, the present lists are presented by you. As the matter has been placed in train for congressional intervention, no action can be taken in

the matter presented by you until Congress shall have had time to consider and dispose of the subject.

"Respectfully, your obedient servant,

"JOS. S. WILSON, *Commissioner.*"

On the 7th July, 1860, the Commissioner of the Land Office, in an official letter to the Secretary of the Interior in relation to the same subject, said:

"Without passing upon, or, in fact, considering the question as to the right of the State under the railroad grant to these lands, which, at the date of the grant had been withdrawn from sale or location, the fact that Congress has taken incipient action in the matter, of itself justifies us in not recommending further proceedings by the Department until after the close of the next session of Congress.

"Respectfully, your obedient servant,

"JOS. S. WILSON, *Commissioner.*"

On the 6th September, 1860, the Secretary of the Interior addressed the following letter to the Commissioner of the General Land Office:

DEPARTMENT OF THE INTERIOR,
Washington, Sept. 6, 1860.

SIR: In the absence of any direct application by the governor of the State of Iowa, for final action in the certification of certain lands common to the claimed limits of the grant to that State for the improvement of the Des Moines River and the grants for aid in constructing railroads; my opinion is that it will be proper, as you suggest, to delay action until after the close of the next session of Congress.

132 The papers enclosed with your letter of the 7th July last and 3d instant are now returned.

Very respectfully, your obedient servant,

J. THOMPSON, *Secretary.*

The COMMISSIONER OF THE GENERAL LAND OFFICE.

On 3d November, 1860, the Secretary addressed a letter to Hon. Geo. W. Jones, Senator from the State of Iowa, in which he said:

SIR: I have the honor to acknowledge the receipt of your letter of this date, and have considered the same in connection with the letter of Mr. Steiger, agent of the Dubuque & Sioux City Railroad Company, of the 1st instant; both relating to the certification to the State of Iowa, of lists of odd-numbered sections of land within the six and fifteen mile limits of the railroad, "from the city of Dubuque to a point on the Missouri River, near to Sioux City."

For your information, I herewith enclose copies of my letters of the 6th September last to the Commissioner of the General Land Office, and of the 1st of October to Mr. Steiger, and in reply to your letter would state that, as respects those tracts within the limits of the railroad grant which have already been certified to the State of Iowa by my predecessor, under the previous grant of 8th August, 1846, in the absence of a formal and sufficient surrender by the State of all claims under the prior grant, and a direct demand from the State authorities for lists under the later grant, I deem it proper to suspend action at present so far as the claims interfere. The subject of these opposing claims is involved with proposed legislation pending in Congress; and the State authorities still assert the equity of the title which has been

recognized by my predecessors, though since declared to be invalid by a decision of the Supreme Court of the United States.

* * * * * * *

Very respectfully, your obedient servant,

J. THOMPSON, *Secretary.*

Hon. GEO. W. JONES, *of Iowa, present.*

133 On the 2d March, A. D. 1861, the Congress of the United States passed a joint resolution providing that "all the title which the United States still retain in the tracts of land along the Des Moines River, and above the mouth of the Raccoon Fork thereof, in the State of Iowa, which have been certified to said State improperly by the Department of the Interior, as part of the grant by act of Congress, approved August 8, 1846, and which is now held by bona fide purchasers under the State of Iowa, be, and the same is hereby, relinquished to the State of Iowa."

On the 10th of April, 1862, the Secretary of the Interior addressed to the Commissioner of the Land Office a letter, as follows:

DEPARTMENT OF THE INTERIOR,
Washington, April 10, 1862.

SIR: In answer to your communication of the 18th March last, making certain inquiries respecting the proper disposition of lands in Iowa, granted to the State by act of Congress of 15th May, 1856, and by joint resolution, approved March 2, 1861, I am of opinion that they are to be disposed of as said act and resolution directs, without any regard to the act of August 8th, 1846, referred to in your letter.

It appears that the action of this Department in construing the last-named act has been in no respect uniform; not sufficiently so to form a precedent for its present direction; and if it had there are now other considerations which will control its action. The Supreme Court has decided, in the case of the Dubuque & Pacific Railroad Company vs. Litchfield, (23 Howard, page 66,) that the act of 8th August, 1846, did not cede any lands to the State above the Raccoon Fork, and the before-mentioned joint resolution declares that the lands above the Raccoon Forks were improperly certified as a portion of the grant of 8th August, 1846.

It follows, then, that such of those lands as are embraced in the act making the railroad grant, approved May 15, 1856, are to be disposed of according to the terms of that act, and that without any regard to the fact of their having been certified under the act of August 8th, 1846.

134 After completely satisfying the demands of the State embraced by that act, so much of the residue of the lands north of the mouth of Raccoon River as were certified under the supposed grant of August 8th, 1846, and which the State of Iowa had sold to bona fide purchasers prior to the 2d March, 1861, will be also certified to the State of Iowa.

The act of 15th May, 1856, granting lands to the State for railroad purposes, excepts such lands as the rights of pre-emption have attached thereto. This last remark is made because it affects the case of Cilly, and, may be, others claiming pre-emption on said lands.

Very respectfully, your obedient servant,

CALEB B. SMITH,
Secretary.

To the COMMISSIONER OF THE GENERAL LAND OFFICE.

Up to the time of receiving said letter the General Land Office had continued to reserve "the lands lying along the Des Moines River, in Iowa, within the claimed limits of the Des Moines grant in that State, above the mouth of the Raccoon Fork of said river," in the manner and for the purposes mentioned in its aforesaid printed notice No. 661, dated 18th May, 1860. After receiving said letter the Commissioner wrote to Ex-Governor Grimes, then a Senator from Iowa, as follows:

GENERAL LAND OFFICE, *April 15th*, 1862.

SIR: I have the honor to enclose herewith a copy of the decision of the Secretary of the Interior, of the 10th inst., in the case submitted to the Department in our letter of the 18th ult., a copy of which was furnished you in a letter of the same date.

Pursuant to said decision it is proposed to make out the lists of lands enuring to the State for railroad purposes, under the act of 15th May, 1856, in so far as the 6 and 15 miles limits of certain routes under that grant traverse the region which had been claimed by the State of Iowa, under the act of 8th August, 1846, for the Des Moines River improvement, above the Raccoon Fork, irrespective of the certified lists to the latter, which are held to be invalid under the decision of the Supreme
135 Court of the United States, at its December term, 1859.

With great respect, your obedient servant,

J. M. EDMUNDS,
Commissioner.

Hon. J. W. GRIMES, *U. S. Senate.*

The Governor of Iowa replied as follows:

EXECUTIVE OFFICE, IOWA, *May 6th*, 1862.

J. M. EDMUNDS,
Commissioner General Land Office, Washington City, D. C.

SIR: Yours of the 15th April last, covering copy of decision of Secretary Smith, in regard to the effects of the grants of lands made to this State by the acts of August 8th, 1846, and May 15th, 1856, is at hand.

A portion of these lands was once certified to this State as school lands, and the certification subsequently set aside because the Department decided them to be covered by the act of 8th August, 1846.

They were then certified to the State under the last-named act, and now that certificate is set aside because the lands were not covered by that act. They are now decided to be covered by the act of 1856. This State has sold portions of these lands as school lands, and as lands enuring to the State under the act of 1846, and the titles of many grantees of the State are involved in the present decision. I understand the question will be again brought before the Supreme Court of the United States, and my principal object in writing you is that this State may not lose her equitable claims for reclamation on the United States, in case the State suffers loss by reason of the failure of the title conveyed by this State under certificates of the United States.

Very respectfully, your obedient servant,

SAMUEL J. KIRKWOOD.

On the 26th of June, 1862, the said Commissioner of the Land Office wrote to the Governor of the State of Iowa, as follows:

136 GENERAL LAND OFFICE, *June 26th*, 1862.

SIR: The attention of this office has been called to the condition

of the lands in the region of the Des Moines River, above the mouth of the Raccoon Fork, which were claimed by the State of Iowa under the act of the 8th of August, 1846, for the improvement of said river:

1st. The act of 1846, by the decision of the Supreme Court of the United States, at its December term, 1859, is restricted to the lands lying below the mouth of the Raccoon Fork, and the claim of the State to all lands lying above that point as abnegated.

2d. Under the decision of the Supreme Court the Secretary of the Interior has held that the alternate odd-numbered sections falling within the six and fifteen mile limits of the railroads, where they traverse the region of the Des Moines River above the mouth of the Raccoon Fork thereof, would enure to the State under the act of 15th May, 1856, to aid in the construction of said roads.

3d. The joint resolution of Congress of the 2d March, 1861, declares "that all the title which the United States still retain in the tracts of land along the Des Moines River, and above the mouth of the Raccoon Fork thereof, in the State of Iowa, which have been certified to said State improperly by the Department of the Interior, as part of the grant by Congress, approved August eighth, eighteen hundred and forty-six, and which is now held by bona fide purchasers under the State of Iowa, be, and the same is hereby, relinquished to the State of Iowa."

To enable us properly to act in the matter, in view of the aforesaid decision and resolution, I have to request that you will furnish this office with a list of the tracts of land therein referred to, "held by bona fide purchasers of the State of Iowa," on the 2d of March, 1861, certified under official seal, specifying in each case the date of sale, name of purchaser, consideration, and date of patent or deed of conveyance by the State, with all the essential particulars connected with the transaction. This information is requested at your earliest convenience.

Very respectfully, your obedient servant,

J. M. EDMUNDS,
Commissioner.

To his excellency GOVERNOR OF IOWA,
Des Moines, Iowa.

137 In reply the governor of Iowa caused to be filed in said General Land Office a list certified to by the said governor, and by the land commissioner of said State, under their official seal, of all the lands situated above the Raccoon Fork of the Des Moines River, which had been certified and approved to the State under said act of 8th August, 1846; and also setting forth that all of said land had been sold and conveyed by said State, by deed or patent, prior to said 2d March, 1861, as follows:

"*List of Des Moines River lands above the mouth of the Raccoon Fork sold by the State of Iowa.*

Then follow list of about 697 individual sales, as follows:

Dates of patents.	No. of patents.
February 16, 1853	148
June 1, 1854	29
June 1, 1855	2
July 1, 1858	430
September 1, 1858	13
October 1, 1858	1

March	14, 1859	5
April	9, 1859	3
April	20, 1859	2
May	23, 1859	18
May	31, 1859	44
July	12, 1859	1
February	12, 1860	1
		697

EXAMPLE.

	Sec.	T.	R.	Acres.	Date.	Name.
W. hf. of N. W. qr. N. E. qr. of N. W. qr.	19	78	24	122.23 at $1.25.	March 25, 1852. Patented Feb. 17, 1853.	Phineas S. Cassidy. No. 2,855.

On the 15th May, 1856, the Commissioner of the General Land Office addressed the following letter to the register and receiver, at Fort Des Moines, Iowa:

138 GENERAL LAND OFFICE, *May 15th*, 1856.

REGISTER AND RECEIVER,
Fort Des Moines, Iowa.

GENTLEMEN: By my telegraphic despatch of the 10th inst., you were directed to suspend from sale or location all the lands in your district until further orders. The object of this withdrawal was to protect from sale the lands granted to the State of Iowa for four railroads running from the Mississippi River to the Missouri, by a bill which had passed both Houses of Congress. Said bill having this day been approved by the President, has become a law, and you will continue to withhold from sale or location until further orders. It is designed to adjust these several grants with as little delay as practicable, in order that the lands remaining to the United States may be returned to market.

I am, very respectfully, your obedient servant,
THO'S A. HENDRICKS, *Commissioner.*

A similar letter was addressed at the same date to the register and receiver, at Fort Dodge, Iowa.

On 19th of June, 1856, the Commissioner of the Land Office addressed to the land officers at Fort Dodge and Fort Des Moines the following letter:

GENERAL LAND OFFICE, *June 19th*, 1856.

GENTLEMEN: Instructions having been sent you from this office by telegraph on the 10th ult., and subsequently by mail on the 15th ult., in reference to the withdrawal from market of certain lands in your district, in pursuance of an act of Congress, approved on the 15th ult., making a grant of land to the State of Iowa in alternate sections, to aid in the construction of certain railroads in that State, you are advised that settlements are authorized upon any of the lands thus withdrawn, and rights of pre-emption may be acquired, as well to sections which may be odd-numbered and within the six-mile limits of the line of the railroads, as to the other lands so reserved.

By the first section of the act referred to, the United States can dispose of, by pre-emption, any of the lands thus withdrawn up to
139 the time "when the lines or routes of said road are definitely

fixed." Then, and not till then, will the right of the State attach under the said act to all vacant lands in the odd-numbered sections within the six-mile limits.

Acknowledge the receipt of this.

Very respectfully,

THO'S A. HENDRICKS, *Commissioner.*

Afterward, the Commissioner of the Land Office issued the following notice, dated:

No. 591.—*Notice for restoration of certain lands to market in Iowa.*

The grant of land made by the act of Congress, approved May 15, 1856, to the State of Iowa, to aid in the construction of certain railroads therein mentioned, having been so far adjusted as to authorize the release from withdrawal of the lands hereinafter described, notice is hereby given that all the vacant offered lands heretofore withdrawn from sale or entry along the routes of said railroads, which lie outside of six miles on each side of said roads, situated in the undermentioned townships, which have not been selected in virtue of said grant, or any other grant made by Congress, or legally claimed by pre-emption, and which were subject to private sale at the date of withdrawal, will be restored to private entry on the days and at the places hereinafter specified, &c.

At the land office at Fort Dodge, on Tuesday, the 23d of February next, viz:

Townships 86, 87, & 88, ranges 29, 30, 31, 32, & 33.

On 28th January, 1857, the Commissioner sent to six different land offices in Iowa (including those at Fort Des Moines and Fort Dodge) a letter, of which the following is a copy:

GENERAL LAND OFFICE, *Jan.* 28, 1857.

GENTLEMEN: For your guidance in disposing of the public lands, I have this day transmitted you by mail a diagram of the district of lands subject to sale at your office, upon which has been traced the 140 lines of route, to aid in the construction of which a grant of lands was made to the State of Iowa by act of Congress approved May 15, 1856.

As all the vacant tracts in the odd-numbered sections outside of the six and within the fifteen mile limits, have been selected by the agent of the State in lieu of the lands sold and pre-empted in the alternate sections granted by the act above mentioned, such tracts are not restored to market by Notice No. 591, (copy herewith,) and you will continue to reserve them, as heretofore, from sale or location for any purpose whatever.

Respectfully, your obedient,

THO'S A. HENDRICKS, *Commissioner.*

The Dubuque & Pacific Railroad Company, mentioned in the 5th section of said act, was organized in 1853 under the laws of Iowa. Article I of its articles of incorporation was as follows:

"L. H. Langworthy, H. A. Sandford, Platt Smith, John J. Dyer, J. P. Farley, R. B. Mason, F. V. Goodrich, Robert C. Waples, M. Mobley, J. R. West, Asa How, F. S. Jessup, Edward Stimson, Geo. W. Jones,

Robert Waller, Robert Schuyler, and their associates, and all such persons as shall hereafter become stockholders in the company hereby incorporated, hereby form themselves into a body corporate, under the name and style of 'The Dubuque & Pacific Railroad Company,' for the purpose of constructing a railroad from some point in the city of Dubuque, thence westerly on the best route toward the Pacific Ocean."

In July, 1856, said company assented to and accepted the aforesaid act.

On the 20th August, 1856, the following letter was addressed by the Commissioner of the General Land Office to the secretary of state of Iowa:

"GENERAL LAND OFFICE, *Aug. 20th*, 1856.

"To GEO. W. MCCLEARY, Esq.,

"*Secretary of the State of Iowa, at Iowa City.*

"SIR: I have the honor to acknowledge the receipt of your
141 communication of the 12th inst., enclosing a certified copy of the act of the State legislature, approved on the 14th July, 1856, to accept the grant, and to carry into execution the trust conferred upon the State of Iowa by the act of Congress making the grant of lands for railroad purposes, approved May 15th, 1856, which has been placed on the regular files at this office.

"It is observed that the 6th section of the law directs that 'it shall be the duty of the governor, after affixing his official signature, to file such map in the Department having control of the public land in Washington, *such location being considered final only so far as to fix the limits and boundary within which lands may be selected.*' The part which I have italicised appears to me to conflict directly with the act of Congress, which contemplates that the route shall be 'definitely fixed.' And it is proper that I should, through you, in this early stage of the business, call the attention of the State executive and the companies to the matter, and announce the opinion of this office, so as to prevent unnecessary delay. A route merely for fixing the limits of the grant will not be acted upon here; it must be something real and fixed. The grant cannot be in one place, and the actual route in another. Although slight variations on the line, such as are unavoidable in the progress of the construction of such works, would be admissible, any material changes of route would be considered as acting in bad faith with the United States, and cannot be tolerated; for such would be a clear violation of the law, which proposes an indemnity to the United States for the lands granted away by the enhanced value of the alternate sections remaining to the Government near the route of the road. The route must, therefore, be first 'definitely fixed,' as required by the law of Congress, or no title vests.

"In the above view, it will be expected that the certificate of the governor on the maps returned to this Department will set forth that such maps delineate the route as 'definitely fixed,' that is, that they are final locations, before they can receive our action.

"I am, respectfully, your obedient servant,

"JOS. S. WILSON,
"*Acting Commissioner.*"

142 On the 30th of September, 1856, said Dubuque & Pacific Railroad Company filed in the office of the secretary of state of Iowa a map having endorsed thereon a certificate as follows:

"OFFICE OF THE DUBUQUE & PACIFIC RAILROAD CO.,
"*Dubuque, Sept. 27th*, 1856.

"It is hereby certified that, in pursuance of the act of the legislative assembly of the State of Iowa, approved July 14th, 1856, entitled 'An act to accept of and carry into effect the trust conferred on the State of Iowa, by an act of Congress,' entitled 'An act making a grant of lands to the State of Iowa,' in alternate sections, to aid in the construction of certain railroads in said State, approved May 15th, 1856.

"This map shows the location of the line and route of the Dubuque & Pacific Railroad from the City of Dubuque to a point on the Missouri River, at Sioux City, with a branch from the mouth of the Tetes des Morts, to the nearest point on said road, as definitely fixed, in compliance with said act of Congress, and in pursuance of a resolution of the board of directors of said railroad company, passed on the 26th day of May, 1856, directing B. B. Provoost, chief engineer of said road, to locate and definitely fix said route. And that so much of the field-work as is dated on said map anterior to the 26th day of May, was located at the time indicated by said dates, in pursuance of several resolutions of said board, directing said engineer to locate the same.

"In testimony whereof the Dubuque & Pacific Railroad Company has hereunto attached its corporate seal, and caused the same to be signed by its president and engineer, at Dubuque, this 27th day of Sept., A. D. 1856.

[L. S.] "J. P. FARLEY, *President.*
"B. B. PROVOOST, *Engineer.*

"Filed Sept. 30th, 1856.

"GEO. W. McCLEARY,
"*Secretary of State.*

"Attest:
"H. P. LEECH,
"*Sec'y of D. & P. R. R. Co.*"

143 GENERAL LAND OFFICE, *March* 3, 1857.

SIR: In reply to your communication of the 28th ult., requesting a statement of the quantity of land which will inure to the Dubuque & Pacific Railroad Company, in Iowa, under the act of Congress, approved 15th May, 1856, subject to the terms and conditions in said act, and the acts of the legislative assembly of said State, the following estimates, carefully prepared at this office, are communicated:

1. The length of the Dubuque & Pacific road, and branch to Tete des Morts, measured on the official map of the route, is	331½	miles.
Which, at six sections, or 3,840 acres per mile, would make	1,272,969	acres.
Deduct for water	21,920	"
Leaves	1,251,040	"

to which the company would be entitled, if found vacant in the odd-numbered sections within fifteen miles of the road.

2. The estimated quantity of vacant lands in the odd-numbered sections within fifteen miles of the road liable for selection, (all situated in Iowa,) is as follows:

In the Sioux City district	880,200	acres.
In the Fort Dodge "	415,360	"
In the Dubuque "	11,045	"
Total	1,306,695	"

which is exclusive of the quantity of 151,800 acres claimed for the Des Moines River grant, above the "Raccoon Fork," within the fifteen-mile limits of the railroad grant, and not yet decided.

It appears, therefore, from the above calculations, that the Dubuque and Pacific Railroad Company will obtain their full complement of land under the grant estimated to cover 1,251,041 acres.

I am, very respectfully, your obedient servant,

THOMAS A. HENDRICKS,
Commissioner.

Hon. BERNHART HENN,
Agent of the State of Iowa
and the Railroad Companies,
Washington, D. C.

144 The following is a copy of the heading of the list of lands within the six-mile limits of the route of the said railroad from Dubuque to Sioux City, approved 27th December, 1858, and of the approval:

Dubuque and Pacific Railroad and branch.

List of lands in the districts of lands subject to sale at Fort Dodge, within the six-mile limit, granted to the State of Iowa by the act of Congress, approved May 15th, 1856, entitled "An act making a grant of lands to the State of Iowa, in alternate sections, to aid in the construction of certain railroads in said State, being the vacant and unappropriated lands in the alternate sections designated by odd numbers, for six sections in width on each side of the railroad from the city of Dubuque to a point on the Missouri River, near Sioux City, with a branch from the mouth of the Tetes des Morts, to the nearest point on said road."

Within the six-mile limits.

GENERAL LAND OFFICE, *Dec. 23d*, 1858.

I, Thomas A. Hendricks, Commissioner of the General Land Office, do hereby certify that the foregoing, on pages one to fourteen, inclusive, is a true and correct list of the tracts of lands within the six-mile limits, granted to the State of Iowa by the act of Congress, approved May 15th, 1856, entitled "An act making a grant of lands to the State of Iowa, in alternate sections, to aid in the construction of certain railroads in said State," being the vacant and unappropriated lands in the alternate sections designated by odd numbers, for six sections in width on each side of the Dubuque & Pacific Railroad and branch within the State of Iowa, and they are now submitted for the approval of the Secretary of the Interior, in accordance with the requirements of said act of May 15th, 1856, subject to all its conditions, and to any valid interfering
145 rights which may exist to any of the tracts embraced in the foregoing list.

In testimony thereof I have hereunto subscribed my name and caused

the seal of the General Land Office to be affixed, at the city of Washington, on the day and year first herein above written.

THOMAS A. HENDRICKS,
Commissioner.

DEPARTMENT OF THE INTERIOR, *Dec. 27th*, 1858.

Approved, subject to the conditions and rights above mentioned.

J. THOMPSON,
Secretary.

And the following is a copy of the heading and approval of the list of lands within fifteen miles of said route, approved 27th December, 1858:

Dubuque and Pacific Railroad and branch.

List of lands in the district of lands subject to sale at Fort Dodge' outside of the six and within the fifteen mile limits of the reserve, to satisfy the grant made to the State of Iowa by the act of Congress, approved May 15th, 1856, entitled "An act making a grant of lands to the State of Iowa, in alternate sections, to aid in the construction of certain railroads in said State, being the lands selected by the agent of the governor of the State of Iowa, from the lands of the United States, in alternate sections and parts of sections designated by odd numbers, nearest to the tiers of sections within six sections in width on each side of the railroad, 'from the city of Dubuque to a point on the Missouri River, near Sioux City, with a branch from the Tete des Morts to the nearest point on said road,' and in lieu of the lands in the alternate sections designated by odd numbers, within said six sections in width, which the United States had legally 'sold or otherwise appropriated, or to which the rights of pre-emption have attached.'"

Between the six and fifteen mile limits.

GENERAL LAND OFFICE, *Dec, 23d*, 1858.

I, Thomas A. Hendricks, Commissioner of the General Land
146 Office, do hereby certify that the foregoing on pages one to twenty-four inclusive, is a true and correct list of the tracts of lands selected by the agent of the State of Iowa outside of the six, and within the fifteen mile limits, under the act of Congress approved May 15th, 1856, entitled "An act making a grant of lands to the State of Iowa, in alternate sections, to aid in the construction of certain railroads in said State;" the said selections being from the lands of the United States, in the alternate sections designated by odd numbers, most contiguous to the tier of sections within six sections in width on each side of the Dubuque & Pacific Railroad and branch, and being in lieu of the land in the alternate sections designated by odd numbers within said six sections in width on each side of said road, which the United States had legally sold, or to which the right of pre-emption had legally attached, prior to the period at which the rights of the State enured under said grant; and they are now submitted for the approval of the Secretary of the Interior, in accordance with the requirements of said act of May 15th, 1856, subject to all its conditions, and to any valid interfering rights which may exist to any of the tracts embraced in the foregoing list.

In testimony thereof I have hereunto subscribed my name, and caused

the seal of the General Land Office to be affixed, at the city of Washington, on the day and year first herein above written.

[SEAL.] THO'S A. HENDRICKS,
Commissioner.

DEPARTMENT OF THE INTERIOR, *Dec. 27th*, 1858.

Approved, subject to the conditions and rights above mentioned.

J. THOMPSON, *Secretary.*

147 EXHIBIT IX.

[From Iowa State Register.—Land Office Report, 1865.]

The Secretary of the Interior, (Mr. R. McClelland,) in a letter to the Commissioner of the General Land Office, under date of the 9th June, 1856, said he had concluded to be governed by the advice of the Attorney General, and would approve the lists containing the lands as far as the northern boundary of the State, but directed the lists to be withheld until the contract suggested by the Attorney General, relinquishing all claims to lands in Minnesota, was filed by the State and its assigns.

The assignees of the State, The Des Moines Navigation and Railroad Company, filed its relinquishment, but the agent of the State, the commissioner of the Des Moines River improvement, (Mr. Manning,) declined for want of authority.

"*Joint resolution containing propositions for a settlement with The Des Moines Navigation and Railroad Company.*

Whereas The Des Moines Navigation and Railroad Company have heretofore claimed, and do now claim to have entered into certain contracts with the State of Iowa, by its officers and agents, concerning the improvement of the Des Moines River in the State of Iowa; and

Whereas disagreements and misunderstandings have arisen, and do now exist, between the State of Iowa and said company, and it being conceived to be to the interest of all parties concerned to have said matters and all matters and things between said company and the State of Iowa settled and adjusted: Now, therefore—

Be it resolved by the general assembly of the State of Iowa, That, for the purpose of such settlement, and for that purpose only, the following propositions are made by the State to said company: That the said company shall execute to the State of Iowa full releases and discharges of all contracts, agreements, and claims with or against the State,
148 including rights to water rents which may have heretofore or do now exist, and all claims of all kinds against the State of Iowa and the lands connected with the Des Moines River improvement, excepting such as are hereby by the State secured to the said company, and also surrender to said State the dredge-boat and its appurtenances belonging to said improvement; and the State of Iowa shall, by its proper officer, certify and convey to the said company all lands granted by an act of Congress, approved August 8th, 1846, to the then Territory of Iowa, to aid in the improvement of the Des Moines River, which have been approved and certified to the State of Iowa by the General Government, saving and excepting all lands sold or conveyed, or agreed to be sold or conveyed by the State of Iowa, by its officers and agents, prior to the 23d day of December, 1853, under said grant; and said

company or its assignees shall have right to all of said lands so herein granted to them as fully as the State of Iowa could have under or by virtue of said grant, or in any manner whatever, with full power to settle all errors, false locations, omissions, or claims in reference to the same, and all pay or compensation therefor by the General Government, but at the cost and charges of said company, and the State to hold all the balance of said lands, and all rights, powers, and privileges under and by virtue of said grant, entirely released from any claim by or through said company; and it is understood that, among the lands excepted and not granted by the State to said company, are 25,487.87 acres, lying immediately above Raccoon Forks, supposed to have been sold by the General Government, but claimed by the State of Iowa. And it is further agreed that said company release and convey to the State of Iowa, or its representatives, all materials of every kind and description, prepared for, or intended for the construction of locks or dams in said improvement, wheresoever the same may be, and the State shall take the existing contracts, but no other liabilities of any name or nature excepting as herein provided for, constructing or repairing the works on said improvement at Keosauqua, Bentonsport, Plymouth, and Croton, and no other or different, with all liabilities and advantages arising upon said contracts and per centage retained thereon, excepting
that the company shall pay all estimates for work done or mate-
149 rial prepared up to this date, beyond the percentage reta'ned from the contractors under their agreements; and the said company shall be discharged from all claims against the State or the said improvement, or any of its officers or agents, arising from or growing out of any agreement or liability prior to the 9th day of June, 1854, and said company shall be discharged from all liability for the claims of the officers of the State for services or salaries. The said company hereby agree to pay the State the sum of twenty thousand dollars, which sum shall be paid to the order of the commissioner of the Des Moines River improvement, as fast as he may require the same to liquidate existing liabilities against said Des Moines River improvement, on thirty days' notice given to said company at their office in the city of New York, and any bonds or certificates of indebtedness against said improvement not exceeding in amount the sum of eleven thousand dollars, which are now due and unpaid, are to be received in part payment of said sum of twenty thousand dollars: *Provided*, that no liabilities assumed by the State in this contract shall be a charge against the State in her sovereign capacity, but all such liabilities, if any, shall be chargeable upon and payable out of the remaining lands belonging to the Des Moines River grant: *And provided, also*, that if Congress shall permit a diversion of the lands of said Des Moines River grant, or the title thereto shall become vested in the State so as to become subject to grant, the said remaining lands, after the payment of all the liabilities as aforesaid, against said improvement and the completion of such locks and dams in the Des Moines River as the legislature shall direct, shall be granted to the Keokuk, Fort Des Moines and Minnesota Railroad Company, to aid in the construction of a railroad up and along the valley of the Des Moines River, upon such terms and in such manner as the legislature may provide, one-fourth of which said lands shall be applied by said company to aid in the construction of said road above the city of Des Moines: *And provided, further*, that if The Des Moines Navigation and Railroad Company shall ratify and accept these
propositions for a contract by filing a written acceptance thereof
150 in the office of the secretary of state within sixty days from the

passage of this joint resolution, then this contract shall be in force and bind both of the parties thereto."

Approved March 22d, 1858.

The Des Moines Navigation and Railroad Company ratified and accepted the above propositions, within the time and in the manner specified. The company paid the State $20,000 in cash, and released and conveyed to the State the dredge-boat and materials in the resolution named, and the governor of State on the 3d day of May, 1858, executed to the D. M. N. & R. R. Co. fourteen deeds or patents in the following form, to wit:

"This indenture, made the third day of May, one thousand eight hundred and fifty-eight, by and between the State of Iowa, party of the first part, and The Des Moines Navigation and Railroad Company, parties of the second part, witnesseth: That the party of the first part, for and in consideration of one dollar, paid by the parties of the second part, and in pursuance of the contracts and agreements between the State of Iowa and the said Des Moines Navigation and Railroad Company, for the improvement of the navigation of the Des Moines River, in the State of Iowa, does hereby sell, grant, bargain, and convey to the said Des Moines Navigation and Railroad Company, the following referred to and described lands, to wit, &c.: To have and to hold the above-described lands, and each and every parcel thereof, with all the rights, privileges, immunities, and appurtenances of whatever nature thereunto belonging or appertaining, unto the said Des Moines Navigation and Railroad Company, their successors and assignees, forever, in fee-simple.

"In testimony whereof I, Ralph P. Lowe, governor of the State of Iowa, have caused the great seal of the State of Iowa to be hereunto affixed.

Given under my hand at the city of Des Moines, the day and year first above written, and of the State of Iowa the 12th year.

[L. S.] RALPH P. LOWE.

By the governor:

ELIJAH SELLS, *Secretary of State.*

151 This is to certify that the foregoing deed was received from the governor June 10th, 1858, and recorded in Des Moines River records, book A, pages , June 18th, 1858.

T. S. PARVIN,
Register State Land Office.
By D. S. WARREN, *Deputy.*

All together, conveying to said company 256,703.64 acres, and describing the same by section, town, and range.

These deeds cover, or at least were intended to convey, all the lands of this grant certified to the State by the General Government, not previously sold.

And, as if for the purpose of covering any tracts or parcels that might have been overlooked or omitted in said deeds, the State, on the 18th of May, 1858, executed the following conveyance, to wit:

"This indenture, made this 18th day of May, 1858, by and between the State of Iowa, party of the first part, and the Des Moines Navigation and Railroad Company, parties of the second part, witnesseth: That the said party of the first part, for and in consideration of one dollar paid by the parties of the second part, and in pursuance of the

contracts and agreements between the State of Iowa and The Des Moines Navigation and Railroad Company, for the improvement of the navigation of the Des Moines River in the State of Iowa; and in pursuance of a joint resolution of the general assembly of the State of Iowa, approved the 22d day of March, 1858, does hereby sell, grant, bargain, and convey to the said Des Moines Navigation and Railroad Company, the following described lands, to wit: All lands granted by an act of Congress, approved August 8th, 1846, to the then Territory of Iowa, to aid in the improvement of the Des Moines River, which have been approved and certified to the State of Iowa by the General Government, saving and excepting all land sold or conveyed, or agreed to be sold or conveyed by the State of Iowa, by its officers and agents, prior to the 23d day of December, 1853, under said grant, and said company, or its assigns, shall have right to all of said lands so
152 herein granted to them, as fully as the State of Iowa could have, under or by virtue of said grant, or in any manner whatever, with full power to settle all errors, false locations, omissions, or claims in reference to the same, and all pay or compensation therefor, by the General Government, but at the costs and charges of said company; and the State to hold all the balance of said lands, and all rights, powers and privileges, under and by virtue of said grant, entirely released from any claim by or through said company; and it is understood that, among the lands excepted and not granted by the State to said company, are 25,487.87 acres, lying immediately above the Raccoon Fork, supposed to have been sold by the General Government, but claimed by the State of Iowa: To have and to hold the above described lands, and each and every parcel thereof, with all the rights, privileges, immunities, and appurtenances of whatever nature thereunto belonging or appertaining, unto The Des Moines Navigation and Railroad Company, their successors and assigns forever, in fee-simple.

"In testimony whereof I, Ralph P. Lowe, governor of the State of Iowa, have caused the great seal of the State of Iowa to be hereunto affixed.

"Given under my hand at the city of Des Moines, the day and year first above written, and of the State of Iowa the 12th year.

[L. S.] RALPH P. LOWE.

By the governor:

ELIJAH SELLS,
Secretary of State.

"This is to certify that the foregoing deed was received from the governor, June 10th, 1858, and recorded in Des Moines River records, book 'A,' pages 45 and 46, June 18th, 1858.

"T. S. PARVIN,
"*Register State Land Office.*
"By D. S. WARREN, *Deputy.*"

These deeds, fifteen in all, convey, it is claimed by The Des Moines Navigation and Railroad Company, 266,108 acres, of which about 53,367 are below the Raccoon Fork, and the balance, 212,741 acres, above the Raccoon Fork.

153 In addition to the 212,741 acres, thus deeded to the Des Moines Navigation and Railroad Company, the State has sold and deeded to individual purchasers above the Raccoon Fork 58,830 acres, making in all deeded above said Fork 271,571 acres; all of which had been

certified and approved to the State by the General Government as Des Moines River lands.

In pursuance of the act of the general assembly, approved March 23d, 1858, patents have been issued for all Des Moines River lands purchased of the State prior to June 9th, 1854, and all duly recorded in this office. A part of them have been delivered, and the balance are ready for delivery, upon the surrendering up of the proper certificates.

The general assembly donated the remainder of this grant to the Keokuk, Fort Des Moines and Minnesota Railroad Company by the passage of the following act, which was approved March 22d, 1858, to wit:

"An act disposing of the grant of land made by an act of Congress, granting land to the Territory of Iowa to aid in the improvement of the navigation of the Des Moines River."

SECTION 1. *Be it enacted by the general assembly of the State of Iowa*, That all the lands granted to the then Territory of Iowa by an act of Congress, approved August eighth, eighteen hundred and forty-six, entitled an act granting lands to the Territory of Iowa, to aid in the improvement of the navigation of the Des Moines River, in said Territory, and all lands and compensation which may be given in extension or in lieu of any portion thereof by the General Government, and also all stone, timber, and other material turned over to the State by The Des Moines Navigation and Railroad Company, in settlement with the State of Iowa, be, and the same are hereby, disposed of and granted to the Keokuk, Fort Des Moines and Minnesota Railroad Company, a body corporate, created and existing under the laws of the State of Iowa, to aid in the construction of a railroad from the city of Keokuk, at the mouth of the Des Moines River, up and along the valley of said river by way of the city of Des Moines, to the northern line of the State,
154 in the direction of the southern bend of the Minnesota or St. Peter's River, excepting all the land belonging to said grant heretofore sold by the State of Iowa, or which may hereafter be conveyed to The Des Moines Navigation and Railroad Company, by virtue of a settlement now pending between the State and said Company, and also so much of the said timber, stone, and other material as may be used in the completion of the locks and dams at Croton, Plymouth, Bentonsport and Keosauqua; this grant to become operative as soon as Congress shall assent to or permit a diversion, or the title thereto shall become vested in the State so as to be subject to grant.

SEC. 2. That the Keokuk, Fort Des Moines and Minnesota Railroad Company shall pay all liabilities against said Des Moines River improvement, and against the State of Iowa, growing out of said improvement, whether by contracts between the State and other parties, or between The Des Moines Navigation and Railroad Company and other parties, or between any parties whatever, which have been assumed by the State in consequence of the proposed settlement with The Des Moines Navigation and Railroad Company, as contained in the joint resolution passed at the present session of the general assembly. And said company shall also complete the locks and dams at Croton, Plymouth, Bentonsport, and Keosauqua, and fifty thousand acres of the lands which may hereafter be certified by the General Government to the State of Iowa, shall be set apart by the register of the State land office, which said lands shall be held for the purpose of securing the payment of said liabilities and the completion of said locks and dams, and that

whenever said company shall pay thirty thousand dollars of said liabilities properly audited and allowed by the register of the State land office, or shall do thirty thousand dollars' worth of work on said locks and dams, to be certified and allowed by an engineer to be appointed by the governor to superintend said works; that then the register of the State land office shall issue to said company a certificate for ten thousand acres of said lands so set apart, for every thirty thousand dollars so paid or expended, until said liabilities are paid, and said locks and dams are completed; and, if any of said fifty thousand acres
155 of land shall remain after the payment of said liabilities and the completion of said locks and dams, it shall be certified to said Railroad Company in the same manner provided in this act: *Provided*, that if the proceeds of said fifty thousand acres of land shall at any time be found insufficient to discharge existing contracts for constructing or repairing the works at Keosauqua, Bentonsport, Plymouth, and Croton, and in all respects preserve the State harmless on account of any liabilities now existing against the State, or that have been assumed by the proposed settlement with The Des Moines Navigation and Railroad Company, or arising in any manner from the past improvement of the Des Moines River, or the payment of the officers or agents employed in and about said improvement, then the said Keokuk, Fort Des Moines & Minnesota Railroad Company shall be liable to pay the State the amount of said deficiency.

SEC. 3. Whenever the president and chief engineer of said railroad company shall certify under oath to the register of the State land office that twenty miles of said railroad, in a continuous line from the town of Bentonsport, up the valley of the Des Moines River, have been completed, and the cars running thereon, the register shall issue to said company a certificate for one hundred and twenty sections of land, to be taken as nearly as practicable in a body from the remaining lands nearest to the completed part of said railroad, and the governor shall, upon presentation of said certificate, issue to said company a patent for said lands, and so from time to time as twenty miles are completed, until three-fourths of said lands are exhausted: *Provided*, That the lands hereby granted and so certified to said company shall be exclusively applied in extending the construction of said railroad in a continuous line above Bentonsport, and shall be applied to no other purpose whatever; and provided also, that one-fourth in quantity of said land shall be applied by said company in the construction of said road above the city of Des Moines; the said one-fourth to be certified in manner as herein provided from the completion of each twenty miles from the city of Des Moines up the valley of the Des Moines River.

156 SEC. 4. The grant aforesaid is made to said company upon the express condition that, in case such railroad company shall fail to have completed and equipped seventy-five miles of road up the valley of the Des Moines River, from the town of Bentonsport, within three years from the first day of December next, thirty-three miles in addition in each year thereafter, for five years, and the remainder of the whole line in three years thereafter, or on the first day of December, eighteen hundred and sixty-eight, then, in that case, it shall be competent for the State of Iowa to reserve all rights to the lands hereby granted, then remaining uncertified to said company so failing to have the length of road completed in manner aforesaid.

SEC. 5. That this grant is subject to all the provisions of an act of the general assembly of the State of Iowa, approved July fourteen, eighteen hundred and fifty-six, entitled An act to accept the grant

and carry into execution the trust conferred upon the State of Iowa by an act of Congress entitled An act making a grant of lands to the State of Iowa in alternate sections to aid in the construction of railroads in said State, approved May 15th, 1856, so far as the same are applicable and not inconsistent with the foregoing provisions of this act.

At the December term of the Supreme Court of the United States, held in 1859 and 1860, a decision was made as to the limit of the Des Moines River grant. This decision limits the grant to the Raccoon Fork, and declares all certificates of lands above the Fork as issued without authority of law, and void. (See 23 How., 66.)

On the 3d of March, 1861, Congress passed the following joint resolution:

Public resolution No 5.

"Joint resolution to quiet titles in the State of Iowa."

"*Resolved*, * * * That all the title which the United States still retains in the tracts of land along the Des Moines River, and above the mouth of the Raccoon Fork thereof, in the State of Iowa, which have been certified to said State improperly by the Department of the Interior as part of the grant, by act of Congress, approved August 8th, 1846, and which is now held by bona fide purchasers under the State of Iowa, be, and the same is hereby, relinquished to the State of Iowa."

157 By act of Congress (in response to the joint resolution of the general assembly of April 7, 1862,) it is enacted "That the grant of lands to the then Territory of Iowa, for the improvement of the Des Moines River, made by the act of August 8th, 1846, is hereby extended so as to include the alternate sections designated by odd numbers, lying within five miles of said river, between the Raccoon Fork and the northern boundary of said State. Such lands are to be held and applied in accordance with the provisions of the original grant, except that the consent of Congress is hereby given to the application of a portion thereof in aid of the construction of the Keokuk, Fort Des Moines & Minnesota Railroad, in accordance with the provisions of the act of the general assembly of the State of Iowa, approved March 22nd, 1858. And if any of said lands shall have been sold, or otherwise disposed of by the United States before the passage of this act, excepting those released by the United States to the grantees of the State of Iowa under joint resolution of March 2d, 1862, the Secretary of the Interior is hereby directed to set apart an equal amount of lands within said State to be certified in lieu thereof: *Provided*, That if the State shall have sold and conveyed any portion of the lands lying within the limits of this grant, the title of which has proved invalid, any lands which shall be certified to said State in lieu thereof by virtue of the provisions of this act, shall inure to and be held as a trust fund for the benefit of the person or persons respectively whose titles shall have failed as aforesaid."

Approved July 12, 1862.—(U. S. Statutes at Large, 1862, p. .)

On the 11th of September, 1862, extra session, the general assembly, by joint resolution, accepted the grant of lands donated by the above act of Congress. (Acts Ex. Ses. 1862, p. 50.)

On the same day, the general assembly authorized the governor to appoint one or more commissioners to select the lands embraced in the above grant, the commissioners to report their selections to the register of the State land office, and directing that the lands be held for the purposes of the grant, and in nowise to dispose of the same until future legislation is had. (Acts Ex. ses. 1862, p. 48.)

158 The governor appointed D. W. Kilbourne, of Lee County, commissioner to make the selections, and the General Land Office, on the 25th of April last, issued scrip authorizing the selection of 300,000 acres from the vacant public lands as part of the grant of July 12, 1862. Said commissioner has made the selections as authorized in the Fort Dodge and Sioux City land districts, and has furnished this office with a list of the lands selected. These lands have not yet been set apart to the State, and therefore the report of the commissioner, as required by the second *session* of the act of September 11, 1862, has not been made.

Nothing has been done in this matter since my last report.

"A bill making a grant of lands to the State of Iowa, in alternate sections, to aid in the construction of certain railroads in said State."

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That there be, and is hereby, granted to the State of Iowa, for the purpose of aiding in the construction of railroads from Burlington, on the Mississippi River, to a point on the Missouri River near the mouth of Platte River; from the city of Davenport, via Iowa city and Fort Des Moines, to Council Bluffs; from Lyons City northwesterly to a point of intersection with the main line of the Iowa Central Air-line Railroad, near Maquoketa; thence on said main line, running as near as practicable to the forty-second parallel, across the said State of Iowa to the Missouri River; from the city of Dubuque to a point on the Missouri River near Sioux City, with a branch from the mouth of the Tete des Morts, to the nearest point on said road, to be completed as soon as the main road is completed to that point, every alternate section of land, designated by odd numbers, for six sections in width on each side of said roads. But in case it shall appear that the United States have, when the lines or routes of said roads are definitely fixed, sold any sections or any parts thereof, granted as aforesaid, or the right of pre-emption has attached to the same, then it shall be lawful for any agent or
159 agents to be appointed by the governor of said State to select, subject to the approval of the Secretary of the Interior, from the lands of the United States nearest to the tiers of sections above specified, so much land in alternate sections or parts of sections as shall be equal to such lands as the United States have sold or otherwise appropriated, or to which the rights of pre-emption have attached as aforesaid; which lands (thus selected in lieu of those sold, and to which pre-emption rights have attached as aforesaid, together with the sections and parts of sections by odd numbers as aforesaid and appropriated as aforesaid) shall be held by the State of Iowa, for the use and purpose aforesaid: *Provided*, That the land to be so located shall in no case be further than fifteen miles from the lines of said roads, and selected for and on account of each of said roads: *Provided further*, That the lands hereby granted for and on account of said roads severally shall be exclusively applied in the construction of that road for and on account of which such lands are hereby granted, and shall be disposed of only as the work progresses, and the same shall be applied to no other purpose whatever: *And provided further*, That any and all lands heretofore reserved to the United States by any act of Congress, or in any other manner by competent authority, for the purpose of aiding in any object of internal improvement, or for any other purpose whatever, be, and the same are hereby, reserved from the operations of this act, except so far as it may be found necessary to locate the routes of said

railroads through such reserved lands; in which case the right of way only shall be granted, subject to the approval of the President of the United States.

SEC. 2. *And be it further enacted*, That the sections and parts of sections of land which by such grant shall remain to the United States, within six miles on each side of said road, shall not be sold for less than the double minimum price of the public lands when sold, nor shall any of said lands become subject to private entry until the same have been first offered at public sale at the increased price.

SEC. 3. *And be it further enacted*, That the said lands hereby granted to the said State shall be subject to the disposal of the legislature
160 thereof, for the purposes aforesaid, and no other; and the said railroads shall be and remain public highways for the use of the Government of the United States, free from toll or other charge upon the transportation of any property or troops of the United States.

SEC. 4. *And be it further enacted*, That the lands hereby granted to said State shall be disposed of by said State only in manner following, that is to say: That a quantity of land not exceeding one hundred and twenty sections for each of said roads, and included within a continuous length of twenty miles of each of said roads, may be sold; and when the governor of said State shall certify to the Secretary of the Interior that any twenty continuous miles of any of said roads is completed, then another quantity of land hereby granted, not to exceed one hundred and twenty sections for each of said roads having twenty continuous miles completed as aforesaid, and included within a continuous length of twenty miles of each of such roads, may be sold; and so from time to time until said roads are completed; and if any of said roads are not completed within ten years, no further sale shall be made, and the lands unsold shall revert to the United States.

SEC. 5. *And be it further enacted*, That the United States mails shall be transported over said roads, under the direction of the Post Office Department, at such price as Congress may by law direct: *Provided*, That, until such price is fixed by law, the Postmaster General shall have the power to determine the same.

Approved May 15, 1856.

The general assembly, convened in special session, accepted the grant and made disposition of the lands in the following act, approved July 14, 1856:

An act to accept of the grant and carry into execution the trust conferred upon the State of Iowa by an act of Congress entitled An act making a grant of lands to the State of Iowa, in alternate sections, to aid in the construction of railroads in said State," approved May 15, 1856.

SECTION 1. *Be it enacted by the general assembly of the State of*
161 *Iowa*, That the lands, rights, powers, and privileges granted to and conferred upon the State of Iowa by the act of Congress entitled "An act making a grant of lands to the State of Iowa, in alternate sections, to aid in the construction of railroads in said State," approved May 15, 1856, be, and the same are hereby, accepted upon the terms, conditions, and restrictions contained in said act of Congress.

SEC. 2. That so much of the lands, interest, rights, powers, and privileges as are or may be granted and conferred, in pursuance of the act of Congress aforesaid, to aid in the construction of a railroad from Burlington, on the Mississippi River, to a point on Missouri near the mouth of Platte River, are hereby disposed of, granted, and con-

ferred upon the Burlington & Missouri River Railroad Company, a body corporate, created and existing under the laws of the State of Iowa.

SEC. 3. That so much of the lands, interest, rights, powers, and privileges as are and may be granted and conferred, in pursuance of the act of Congress aforesaid, to aid in the construction of a railroad via Iowa City and Fort Des Moines, to Council Bluffs, are hereby disposed of, granted, and conferred to and upon the Mississippi & Missouri Railroad Company, a body corporate created and existing under the laws of the State of Iowa.

SEC. 4. That so much of the lands, interest, rights, powers, and privileges as are or may be granted and conferred, in pursuance of the act of Congress aforesaid, to aid in the construction of a railroad from Lyons City northwesterly to a point of intersection with the main line of the Iowa Central Air-line Railroad near Maquoketa; thence, on said main line, running as near as practicable to the forty-second parallel, across the said State to the Missouri River, are hereby disposed of, granted, and conferred to and upon the Iowa Central Air-line Railroad Company, a body corporate, created and existing under the laws of the State of Iowa.

SEC. 5. That so much of the lands, interest, rights, powers, and privileges as are or may be granted and conferred, in pursuance of the act of Congress aforesaid, to aid in the construction of a railroad from the city of Dubuque to a point on the Missouri River at or near Sioux City, with a branch from the mouth of the Tete des Morts to the near-
162 est point on said road, to be completed as soon as the main line is completed to that point, are hereby disposed of, granted, and conferred to and upon the Dubuque & Pacific Railroad Company, a body corporate created and existing under the laws of the State of Iowa.

SEC. 6. The lines and routes of the several roads above described shall be definitely fixed and located on or before the first day of April next, after the passage of this act, and maps or plots, showing such lines and routes, shall be filed in the office of the governor of the State of Iowa, and also in the office of the secretary of state of the State of Iowa. It shall be the duty of the governor, by affixing his official signature, to file such map in the Department having the control of the public land in Washington; such location being considered final only so far as to fix the limit and boundary within which lands may be selected; and if it shall appear that the lands that have been donated by the act of Congress aforesaid, for the construction of the several lines above indicated, cannot be obtained by said companies within the limits and along any part of the line aforesaid, the governor shall from time to time appoint agents to make such selections as may be authorized or granted by Congress for the lines aforesaid; but the compensation of such agents and the costs, expenses and charges attendant upon and occasioned by making such selections, shall be fixed, regulated, paid, and borne by each of said railroad companies respectively, upon and for its own line.

SEC. 7. The Iowa Central Air-line Railroad Company shall furnish, equip, and operate the branch of their railroad that will be constructed under this grant from Lyons City to the point of intersection with the main line of their road near Maquoketa, in the same manner with their main line from the west, and as completely as though the same was a continuation of said main line, and shall never give any preference to the main line of said road, or any part thereof, as defined in their articles of incorporation, by business arrangements, tariff of prices, or otherwise, over the said branch of their railroad.

SEC. 8. The grants aforesaid are made to each of said companies

163 respectively, upon the express condition that, in case either of such railroad companies shall fail to have completed and equipped seventy-five miles of its road within three years from the first day of December next, thirty miles in addition in each year thereafter, for five years, and the remainder of their whole line of road in one year thereafter, or on the first of December, A. D. 1865, then and in that case it shall be competent for the State of Iowa to resume all rights conferred by this act upon the company so failing, and to resume all rights to the lands hereby granted and remaining undisposed of by the company so failing to have the length of road completed in manner and time as aforesaid.

SEC. 9. The roads aforesaid shall be constructed upon a gauge with a width of four feet eight and one-half inches, and the iron used in the track shall be of approved quality and pattern, and the said roads shall be completed and finished in a style and of a quality equal to the average of other first-class western roads, and when the roads, or any of them, authorized to be constructed by this act, shall be intersected by the roads of any other railroad company now constructed, or hereafter to be constructed, it shall be the duty of such road or roads receiving the benefit of this act, to furnish all proper and reasonable facilities and to join such other company in making all necessary crossings, turnouts, sidelings, and switches, and other conveniences necessary for the transportation of all freight and passengers over either or any road or roads hereby mutually accommodated, whether said passengers or freight are brought by the roads benefitted by this act, or any other road or roads now constructed, or which may hereafter be constructed, and at such rates as shall not in any case exceed the regular tariff of charges on such road or roads.

SEC. 10. All persons who, at the time said grant was made, held valid claims by actual occupation and improvement upon any of the lands embraced in said grant, shall be protected in the same, and entitled to purchase and enter the same upon the terms and conditions hereinafter provided.

SEC. 11. Any person, wishing to avail himself of the provisions of this act & shall, within three months of the passage thereof, file his
164 application for that purpose with the judge of the county where such lands may be situate, and shall prove to the satisfaction of said judge that his claim is valid, and that the same existed at the time said grant was made; and upon such proof being made, such judge shall give to the applicant a certificate of the fact, and such certificate shall entitle the holder or his bona fide assignee to enter such land at the rate of two dollars and fifty cents per acre; *Provided*, That no person, claimant, or the assignee of a claim, shall be entitled to more than one hundred and sixty acres of land under this act; and provided further, that the person asserting a claim, whether as claimant or assignee shall file his affidavit that he has not, either directly or indirectly, received the benefits of the provisions of this act. Before any rights shall be acquired under such certificate, a copy of the same, together with the evidence, shall be served on the secretary of the company interested, and such company shall have the right to appeal from the decision of such judge to the district court, in the same manner as appeals are taken from the decisions of justice of the peace, at any time within ninety days after the service of such papers, and the same shall be tried as other appeal cases, and an appeal may be taken to the supreme court by either party, in the same manner as appeals in other cases.

SEC. 12. Such certificate, on being filed with the secretary of the com-

pany upon whose line of road such lands may be situate, when no appeal has been taken as herein provided, shall entitle the holder or his assignee to the possession of said land, until the title shall become vested in the company. Upon payment thereafter to the treasurer of the company for said land at the price above designated, such person shall receive from the secretary of the company a patent to such land, not exceeding in quantity one hundred and sixty acres. Such deed or patent shall vest in the purchaser all the title of said company in and to such lands, except so far as to reserve to the company all such right of way and station grounds as may be actually necessary for the uses of the company.

SEC. 13. The said companies shall each severally assent to and accept the provisions of this act, by a written instrument, under the seal of such corporation, with the signatures of the proper officers, within ninety days after the passage of this act, which said acceptance shall be filed in the office of the secretary of state, and be by the secretary recorded in the book kept by him for the recording of articles of association.

SEC. 14. Said railroad companies, accepting the provisions of this act, shall at all times be subject to such rules and regulations as may from time to time be enacted and provided for by the general assembly of Iowa, not inconsistent with the provisions of this act, and the act of Congress making the grant.

SEC. 15. It shall be the duty of the companies receiving the benefits of this act, to make a regular annual report of their proceedings at the usual time and place of electing their officers, exhibiting a detailed statement, as far as practicable, of the amount of their expenditures, liabilities, &c., a copy of which shall be filed in the office of the secretary of state.

SEC. 16. *And be it further enacted*, That any of said companies accepting the grants of lands under this act, shall take the same with the conditions imposed and imcumbrances specified in this act, and shall in no event have any claim or recourse whatever upon the State of Iowa, for a misapplication of said grant, incumbrances, or conditions in this act imposed.

SEC. 17. This act shall take effect and be in force from and after its publication in the Iowa Capital Reporter, and Iowa City Republican. (Acts Extra Session, 1856, p. 1.)

Approved July 14th, 1856.

The several companies accepted the grant on the conditions and under the restrictions imposed in said acts, and proceeded to locate their roads and make selections of the lands falling to them under the grant, between the sixth and fifteen mile limits.

The 9th general assembly passed the following act in reference to the "Dubuque & Sioux City Railroad Company," to wit:

An act to require the Dubuque & Sioux City Railroad Company to release certain swamp, school, and river lands on the line of said road, and providing for the compensation therefor by an extension of the time of building said road.

SECTION 1. *Be it enacted by the general assembly of the State of Iowa*, that, from and after the taking effect of this act, the governor of the State of Iowa shall not certify to the Secretary of the Interior that any part of the road is completed on the line of the Dubuque & Sioux City Railroad, as now provided for by section four (4) of the act of Congress

making said grant, approved May 15th, A. D. 1856; nor shall said road be entitled to receive any certificate for lands on said line of road until said company shall have executed a deed of release of all the swamp and overflowed lands now approved, or that may be hereafter approved by the surveyor general, in any county within the fifteen-mile limits of said road, to the county in which such swamp and overflowed lands may be situated, including all such swamp or overflowed lands as were returned and certified to the General Land Office, and ratified to the State by act of Congress of March 3d, 1857, nor until said Dubuque & Sioux City Railroad Company shall transfer their interest in those tracts of land in Webster and Hamilton counties, heretofore sold by John Tolman, school fund commissioner of Webster County, within the fifteen-mile limits of the grant of said road (whether the same are held by patents from the State, or contracts made with said commissioner,) to the register of the State land office, in trust, to enable said register to carry out and perform said contracts in all cases where he is called upon by the parties in interest to do so, before the first day of January, A. D. 1864, (after which day he is authorized and required to reconvey those tracts aforesaid not demanded or claimed as aforesaid at that time, to said railroad company,) nor until the said Dubuque & Sioux City Railroad Company shall execute deeds of release to the State of Iowa of all lands sold by the State prior to the 7th day of May, A. D. 1854, of the odd sections above the Raccoon Fork of the Des Moines River, within five miles of said river, and of such other of said
167 lands as have been sold since that date and prior to the 1st day of January, A. D. 1862, and now improved and occupied by actual settlers residing thereon, who have purchased the same in good faith, not exceeding, however, one hundred and sixty acres to any one land settler.

SEC. 2. The deeds of release, herein provided for, shall be executed and acknowledged by said company in the same manner as any other deed for the conveyance of real estate, but it shall not be necessary to describe the separate parcels of said lands, and a general release of each kind of land herein described, viz, as "swamp lands," &c., to the State, shall be a valid and legal release of each separate parcel of said lands to the county in which any part thereof may be, and of the Des Moines River lands and school lands aforesaid, to the present claimants of title by sale through the State or said school fund commissioner, as the case may be.

SEC. 3. The said deeds of release shall be filed and recorded in the office of the State register of the State land office, and either the record or the certificate of said register shall be sufficient evidence of the compliance of said companies with the provisions of this act.

SEC. 4. In consideration of the foregoing relinquishment by said road, the time of completion of any part of said road not now completed, shall be extended one year beyond the time of the taking effect of this act; Provided: That the entire road shall be completed by the time provided for by said act of Congress.

SEC. 5. All acts and parts of acts in any manner conflicting with the provisions of this act are hereby repealed.

SEC. 6. This act shall take effect and be in force from and after its publication according to law.

Approved April 7th, 1862.

The Dubuque & Sioux City Railroad Company filed in this office, on the 27th February, 1864, a release as to all lands sold by John Tolman, as school lands. None of these, however, have been certified or approved as railroad lands.

168 TABLE NO. 2.—*Showing, 1st, the 81,707.93 acres certified to the State under the Des Moines River grant on the 30th of October, 1851; 2d, those that were sold and patented by the State to individuals; 3d, those that were patented to The Des Moines Navigation and Railroad Company, and 4th, those subsequently certified and approved to the State as railroad lands, under act of 1856.*

CERTIFIED UNDER DES MOINES GRANT.					SOLD TO INDIVIDUALS BY THE STATE.		PATENTED TO D. M. N. & R. R. CO.		CERTIFIED AS RAILROAD LANDS.	
Parts of sections.	S.	T.	R.	Acres.	Parts of sections.	Acres.	Parts of sections.	Acres.	Parts of sections.	Acres.
S. W. S. W.	5	79	23	40			S. W. S. W.	40		
All	7	79	23	669.44	All but N. E. N. E.	629.44	N. E. N. E	40	All	669.44
S. W. N. E., N. W., N. h'f S. W., N. W. S. E.	17	79	23	320	S. W. N. E., N. W. q'r, N. W. S. W., N. W. S. E.	280	N. E. S. W.	40	N. W., N. h'f S. W., S. W. N. E., N. W. S. E.	320
N. W. N. E., N. h'f N. W.	21	79	23	120			N. h'f N. W., N. W. N. E.	120		
W. h'f N. W., W. h'f S. W., S. E. S. W.	31	80	23	232	S. W. N. W., W. h'f S. W.	143.34	S. E. S. W., N. W. N. W.	88.66	W. h'f N. W., W. h'f S. W., S. E. S. W.	232
Lot 6	9	78	24	43.75	Lot 6	43.79			Lot 6	43.75
S. h'f and fr. on left bank	17	78	24	320.47	S. h'f, and fr. on left bank	320.47			S. h'f lot 1, fr. on left bank	320.47
All	19	78	24	653.12	All	653.12			All	653.12
N. W. N. W.	21	78	24	40	N. W. N. W.	40			N. W. N. W.	40
N. W. N. E., N. W., W. h'f S. W., N. E. S. W.	29	78	24	320	N. W. N. E., E. h'f N. W., N. W. N. W., N. h'f S. W., S. E. S. W.	280	S. W. N. W.	40	N. W., N. W. N. E., N. h'f S. W., S. W. S. W.	320
N. E., E. h'f N. W., N. W. N. W., N. h'f S. E.	31	78	24	363.08	N. E. q'r, E. h'f N. W., N. h'f S. E.	320	N. W. N. W	43.08	N. E., E. h'f N. W., N. W. N. W., N. h'f S. E.	363.08
E. h'f, N. h'f N. W., S. h'f S. W.	1	79	24	508.62	E. h'f, N. h'f N. W., S. h'f S. W.	508.62			N. E., N. h'f N. W., S. h'f S. W., S. E.	508.62
S. W. N. W	3	79	24	40	S. W. N. W	40			S. W. N. W	40
W. h'f S. W., lots 5, 6, 7	5	79	24	188.45	N. W. S. W., lots 5, 6	121.70	S. W. S. W., lot 7	66 75	N. W. S. W., lots 5, 6, 7	148.45
N. h'f N. E., S. W. N. E., S. h'f S. E., W. h'f	7	79	24	523.42	N. h'f N. E., S. W. N. E., S. h'f S. E., W. h'f	523.42			All	523.42
W. h'f N. E., W. h'f S. E., W. h'f S. W., S. E. S. W.	11	79	24	280	W. h'f N. E., W. h'f S. E., W. h'f S. W., S. E. S. W.	280			W. h'f N. E., W. h'f S. E., W. h'f S. W, S. E. S. W.	280
E. h'f S. W., E. h'f N. W.	13	79	24	560	E. h'f S. W., E. h'f N. W.	560			N. E., E. h'f N. W., S. h'f.	560
All	15	79	24	640	All	640			All	640
W. h'f S. W., S. E. S. W., lots 7, 8, 9.	17	79	24	208.25	W. h'f S. W., S. E. S. W., lots 7, 8, 9.	208.25			W. h'f S. W., S. E. S. W., lots 7, 8, 9.	208.25
All	19	79	24	646.74	All	646.74			All	646.74
W. h'f S. W., S. W. N. W., lot 3.	21	79	24	140.30	W. h'f S. W., S. W. N. W.	120	Lot 3	20.30	S. W. N. W., W. h'f S. W., lot 3.	140.30
All	23	79	24	640	All except N. E. N. E.	600	N. E. N. E	40	All	640
N. W., W. h'f S. W.	25	79	24	240	S. h'f N. W., W. h'f S. W.	160	N. h'f N. W.	80	N. W., W. h'f S. W.	240
N. h'f N. E., N. h'f N. W.	29	79	24	160	N. h'f N. E., N. h'f N. W.	160			N. h'f N. E., N. h'f N. W.	160
N. W.	31	79	24	169.96	N. W.	169.96			N. W.	169.96
All	3	80	24	708.23			All	708.28	All	708.23
169 S. h'f S. W.	7	80	24	86.61	S. h'f S. W.	86.61			S. h'f S. W.	86.61
All	9	80	24	640	S. W. q'r	160	N. h'f, S. E.	480	All	640
All	11	80	24	640			All	640	All	640

Table No. 2—Continued.

CERTIFIED UNDER DES MOINES GRANT.					SOLD TO INDIVIDUALS BY THE STATE.		PATENTED TO D. M. N. & R. R CO.		CERTIFIED AS RAILROAD LANDS.	
Parts of sections.	S.	T.	R.	Acres	Parts of sections.	Acres.	Parts of sections.	Acres.	Parts of sections.	Acres.
S. W. N. E., W. h'f, W. h'f S. E.	13	80	24	440			W. h'f, W. h'f S. E., S. W. N. E	440	W. h'f, W. h'f S. E., S. W. N. E.	440
N. h'f, S. E. q'r	15	80	24	480	N. W., S. E	320	N. E	160	N. h'f, S. E	480
N. E	17	80	24	160	N. E. N. E	40	S. h'f N. W., N. W. N. E	120	N. E	160
E. h'f N. E	19	80	24	80	E. h'f N. E	80			E. h'f N. E	80
All	23	80	24	640	N. E., W. h'f	480	S. E. q'r	160	All	640
All	25	80	24	640	W. h'f, N. E. q'r	480	S. E. q'r	160	All	640
N. E. N. E., N. h'f N. W., S. h'f S. W., S. E.	27	80	24	360	N. E. N. E., S. W. S. W., S. E.	240	N. h'f N. W., S. E. S. W	120	N. E. S. E., S. h'f S. E., S. E. q'r.	280
E. h'f S. E., S. W. S. E. lot 1	29	80	24	129. 41	E. h'f S. E., S. W. S. E	120	Lot	9. 41	E. h'f S. E., S. W. S. E., lot 1	129. 41
W. h'f N. W., N. E. N. W., S. W., lots 2, 3, 4, 5, 6.	31	80	24	527. 43	All	527. 43			All	527. 43
N. W., W. h'f S. E	33	80	24	240	N. W., W. h'f S. E	240			N. W., W. h'f S. E	240
E. h'f N. E	35	80	24	80	E. h'f N. E	80			E. h'f N. E	80
W. h'f S. W., S. E. S. W	7	81	24	127. 32			W. h'f S. W., S. E. S. W	127. 32	W. h'f S. W., S. E. S. W	127. 32
All	19	81	24	642. 08			All	642. 08		
S. W. S. W	21	81	24	40			S. W. S. W	40		
W. h'f S. W	27	81	24	80			W. h'f S. W	80	h'f S. W	80
All	29	81	24	640			All	640	All	640
S. E	31	81	24	160			S. E. q'r	160	S. E	160
All	33	81	24	640			All	640	All	640
All but N. E. N. E	1	78	25	643. 65	All N. E. N. E	643. 65			W. h'f N. E., S. E. N. E., N. W., S. h'f.	643. 65
All	3	78	25	617. 12	All	617. 12			E. h'f, N. W., E. h'f S. W	617. 12
E. h'f N. E., S. W. N. E., N. W. N. W., S. E. N. W.	11	78	25	200	E. h'f N. E., S. W. N. E., N. W., S. E. N. W.	200			E. h'f N. E., S. W. N. E., S. E. N. W.	160
E. h'f S. E., lots 6, 7, 8	13	78	25	231. 55	N. E. S. E	40	S. E. S. E., lots 6, 7. 8	191. 55	E. h'f S. E. q'r, lots 6, 7, 8	231. 55
E. h'f S. E	23	78	25	80			E. h'f S. E	80	E. h'f S. E	80
N. W. N. E., N. h'f N. W., N. E. S. W., E. h'f S. E., N. W. S. E.	25	78	25	280			N. h'f N. W., N. W. N. E., N. h'f S. E., N. E. S. W., S. E. S E.	280	N. E., E. h'f N. W., N. W. N. W., E. h'f S. E., N. W. S. E., N. E. S. W.	440
N. h'f	1	79	25	364. 80			N. h'f	364. 80	N. h'f	364. 80
All	3	79	25	681. 70			All	681. 70	All	681. 70
170 N. h'f N. E	5	79	25	99. 91			N. h'f, N. E	99. 91	N. h'f N. E	99. 91
E. h'f N. W., N. W. N W., E. h'f S. W., E. h'f	9	79	25	520			E. h'f, E. h'f N. W., N. W. N. W., E. h'f S. W.	520	E. h'f, E. h'f N. W., N. W. N. W., E. h'f S. W.	520
All	11	79	25	640			All	640	All	640
N. E. N. E., E. h'f S. W	13	79	25	120			N. E. N. E., E. h'f S. W	120	N. E. N. E., E. h'f S. W	120
All	15	79	25	640			All	640	All	640
E. h'f N. E., E. h'f S. E	21	79	25	160			E. h'f N. E., E. h'f S. E	160	E. h'f N. E., E. h'f S. W	160
W. h'f, N. E., S. E. N. E., W. h'f S. E.	23	79	25	600	W. h'f, N. E., S. E. N. E., W. h'f S. E.	600			S. h'f, S. h'f N. E., N. W. N. E., N. W.	600

All	25	79	25	640	All	640			All	640	
All but S. W. S. W	27	79	25	600	All but S. W. S. W	600			N. h'f, N. h'f S. W., S. E. S. W., S. E.	600	
W. h'f N. E., W. h'f S. E., W. h'f.	35	79	25	480	W. h'f N. E., W. h'f S. E., W. h'f,	480			W. h'f, W. h'f N. E., W. h'f S. E.	480	
S. h'f N. E.	1	80	25	80	S. h'f N. S.	80			S. h'f N. E.	80	
S. h'f N. E., E. h'f S. E., lots 1, 2, 3, 4, 5, 6, 7.	3	80	25	497.21	Lots 2, 3, 4, 6	212.04	S. h'f N. E., E. h'f S. E., lots 1, 5, 7.	285.17	S. h'f N. E., E. h'f S. E., lots 1, 2, 3, 4, 5, 6, 7.	497.21	
All	5	80	25	689.74	N. E. N. E., S. E. N. W., E. h'f S. W., S. E.	332.81	S. h'f N. E, N. W. N. E., N. h'f N. W., S. W. N. W., W. h'f S. W.	356.93	All	689.74	
All	7	80	25	652			All	652	All	652	
All	9	80	25	640	N. E., W. h'f, E. h'f S. E	560	W. h'f S. E	80	All	640	
Lots 1, 2, 3, 4, 5, 6, 7	11	80	25	239.63	Lots 1, 2, 6	105.83	Lots 3, 4, 5, 7	133.80	Lots 1, 2, 3, 4, 5, 6, 7	239.63	
Lots 3, 4, 7, 8	13	80	25	180.18	Lots 3, 4, 7, 8	180.18			Lots 3, 4, 7, 8	180.18	
All	15	80	25	640	N. h'f S. E. S. W., S. W. S. E., N. h'f S. E.	480	N. h'f S. W., S. W. S. W., S. E. S. E.	160	All	640	
All	17	80	25	640	S. W. N. E., S. h'f N. W., N. h'f S. W., S. E. S. W., W. h'f S. E.	320	E. h'f N. E., N. W. N. E., E. h'f S. E., N. h'f N. W., S. W. S. W.	320	All	640	
All	19	80	25	653.04			All	653.04	All	653.04	
All	21	80	25	640	E. h'f S. E., E. h'f N. W., N. W. N. W.	200	S. h'f, W. h'f N. E., S. W. N. W.	440	All	640	
All	23	80	25	640	E. h'f, E. h'f N. W., E. h'f S. W. S. W. S. W.	520	W. h'f N. W., N. W. S. W	120	All	640	
All	25	80	25	640	All but S. W. S. E	600	S. W. S. E	40	All	640	
All	27	80	25	640	E. h'f N. E., N. W. N. E., W. h'f S. W., E. h'f S. E.	280	S. h'f, S. W. N. W., W. h'f S. E. S. W. N. E.	360	All	640	
N. E. q'r, W. h'f S. W., S. E.	29	80	25	520	S. W. N. E., S. E. N. W., N. h'f S. W., S. W. S. E.	200	S. h'f S. W., E. h'f N. E., N. W. N. E., W. h'f N. W., N. E. N. W.	320	W. h'f N. E., S. W. S. E	520	
N. E. q'r, E. h'f N. W., N. E. S. E	31	80	25	280			N. E., E. h'f N. W., N. E. S. E.	280	N. E., E. h'f N. W., N. E. S. E.	280	
All	33	80	25	640	S. W., E. h'f S. W., S. E	400	N. E., W. h'f S. W	240	All	640	
All	35	80	25	640	E. h'f N. E., N. W., E. h'f S. E	320	S. W., W. h'f N. E., W. h'f S. E	320	All	640	
All	3	81	25	616.55	W. h'f	307.06	E. h'f	309.49	All	616.55	
All	5	81	25	617.84	All	617.84			All	617.84	
171 All	7	81	25	674.16	N. h'f N. W., S. E	248.54	N. E., S. h'f N. W., S. W	425.62	All	674.16	
All	9	81	25	640	W. h'f N E., N. W., N. W. S. W., S. E. S. W., S. W. S. E.	260	E. h'f S. E., N. W. S. E., E. h'f N. E., N. E. S. W., S. W. S. W.	280	All	640	
All	11	81	25	640	N. W., S. h'f	480	N. E	160	All	640	
All	13	81	25	640	N. W., S. h'f	480	N. E	160			
All	15	81	25	640	N. E., S. W. N. W., E. h'f S. W., S. W. S. W., S. E.	480	E. h'f N. W., N. W. N. W., N. W. S. W.	160			
All	17	81	25	640	N. E., N. E. N. W., N. W. S. W., S. E. S. W., E. h'f S. E., S. W. S. E.	400	N. W. S. E., S. h'f N. W., N. W. N. W., N. E. S. W., S. W. S. W.	240			
E. h'f, E. h'f N. W., N. W. N. W., E. h'f S. W.	19	81	25	529.17	E. h'f, E. h'f N. W., N. W. N. W., E. h'f S. W.	529.17					
E. h'f	21	81	25	320	N. E. N. E., S. h'f N. E., S. E. q'r.	280	N. W. N. E	40			
All	23	81	25	640	S. h'f N. E., W. h'f S. E	560	N. h'f N. E	80			

Table No. 2—Continued.

CERTIFIED UNDER DES MOINES GRANT.					SOLD TO INDIVIDUALS BY THE STATE.		PATENTED TO D. M. N. & R. R. CO.		CERTIFIED AS RAILROAD LANDS.	
Parts of sections.	S.	T.	R.	Acres.	Parts of sections.	Acres.	Parts of sections.	Acres.	Parts of sections.	Acres.
All	25	81	25	640	S.W. N. E., W. h'f, W.'f. S. E. q'r.	440	E. h'f N. E., N. W. N. E., E. h'f S. E.	200		
E. h'f N. E., W. h'f N. W.	27	81	25	160	E. h'f N. E., E. h'f N. W	160				
N. h'f N. E., lots 5, 6, 7, 8	29	81	25	268. 37	N. h'f N. E., lots 5, 6, 7, 8	268. 37				
All	31	81	25	675. 62	N. E., N. W., N. h'f S. E	415. 87	S. W., S. h'f S. E	259. 75		
S. W. S. W., lots 2, 3, 4, 5, 5, 6	33	81	25	251. 91	Lots 2, 3, 4, 5, 6, S. W. S. W	251. 91				
All	35	81	25							
All	5	82	25	635. 18			All	635. 18	All	635. 18
All	7	82	25	658. 86			All	658. 86	All	658. 86
W. h'f N. W., W. h'f S. W., S. E. S. W.	9	82	25	200			W. h'f N. W., W. h'f S. W., S. E. S. W.	200	W. h'f N. W., W. h'f S. W., S. E. S. W.	200
All	17	82	25	640			All	640	All	640
W. h'f, W. h'f N. E., S. E. N. E., W. h'f S. E., N. E. S. E.	21	82	25	560			W. h'f N. E., S. E. N. E., W. h'f, W. h'f S. E., N. E. S. E.	560	W. h'f N. E., S. E. N. E., W. h'f S. E., N. E. S. E.	560
S. W. N. W., W. h'f S. W.	27	82	25	120			W. h'f S. W., S. W. N. W	120	W. h'f S. W., S. W. N. W	120
All	29	82	25	640			All	640	All	640
All	31	82	25	663. 10			All	663. 10	All	663. 10
All	33	82	25	640			All	640	All	640
W. h'f, W. h'f N. E., W. h'f S. E.	7	83	25	467. 98			W. h'f, W. h'f N. E., W. h'f S. E. q'r.	467. 98	W. h'f, W. h'f N. E., W. h'f S. E.	467. 98
172 All	19	83	25	653. 08			All	653. 08	All	653. 08
W. h'f N. W., S. W. q'r	29	83	25	240			S. W., W. h'f N. W	240	W. h'f N. W., S. W	240
All	31	83	25	665. 52			All	665. 52	All	665. 52
All	1	80	26	698. 18			All	698. 18	All	698. 18
All	3	80	26	701. 92			All	701. 92		
E. h'f, N. W., N. E. S. W	5	80	26	578. 78			E. h'f, N. W., N. E. S. W	578. 78		
E. h'f, N. W., E. h'f S. W	9	80	26	560			E. h'f, N. W., E. h'f S. W	560		
All	11	80	26	640	N. h'f N. E., N. W. S. E	120	W. h'f, S. h'f N. E., E. h'f S. E., S. W. S. E.	520	All	640
All	13	80	26	640	W. h'f N. W	80	E. h'f, S. W., E. h'f N. W	560	All	640
N. h'f, N. E. S. E	15	80	26	400			N. h'f, N. h'f S. E	400	N. h'f, N. h'f S. E	400
N. E. N. E	23	80	26	40			N. E. N. E	40	N. E. N. E	40
N. E., N. E. N. W., E. h'f S. E.	25	80	26	280			N. E., E. h'f S. E., N. E. N. W	280	N. E., N. E. N. W., E. h'f S. E.	280
S. E	1	81	26	160	N. h'f S. E., S. W. S. E	120	S. E. S. E	40	S. E	160
All but S. h'f S. W	3	81	26	600. 56	All but S. h'f S. W., N. W. S. W	460. 56	N. W. S. W	40	E. h'f, N. W., N. h'f S. W	500. 56
All	5	81	26	595. 26	All but S. W. N. W	555. 26	S. W. N. W	40	All	595. 26
All	7	81	26	612. 08			All	612. 08	All	612. 08
All	9	81	26	40	N. h'f, N. h'f N. E., S. W. N. E., N. h'f S. W., S. E. S. W.	560	S. W. S. W., S. E. S. E	80	All	640

S. W. S. W., lots 5, 6, 7, 8, 9.	11	81	26	302.04	S. W. S. W., lots 5, 6, 7, 8, 9 ..	302.04	.....	.....	.....	S. W. S. W., lots 5, 6, 7, 8, 9..	302.04
N. h'f, E. h'f S. E., lot 1....	13	81	26	400.39	E. h'f N. E., S. W. N. E., N. W., E. h'f S. E.	360	N. W. N. E., lot 1.....	49.35		N. E. N. W., E. h'f S. E., lot 1.	409.35
All.....	15	81	26	640	N. h'f N. E., N. W., S. h'f	560	S. h'f N. E	80		All.....	640
All.....	17	81	26	640	.....	.....	All	640		All.....	540
All.....	19	81	26	612	.....	.....	All	612		All.....	640
All.....	21	81	26	640	N. h'f	320	S. h'f.....	320		All.....	640
N. h'f S. E	23	81	26	480	N. h'f, S. E.....	480	.....	.....		E. h'f, N. W.....	480
S. h'f, S. E. N. W., lots 1, 2, 3, 4.	25	81	26	545.42	S. h'f, S. E. N. W., lots 1, 2, 3, 4	545.42	.....	.....	.....	.....	.....
All.....	27	81	26	640	N. E., E. h'f N. W., N. h'f S. E.	320	S. W., S. h'f S. E. q'r, W. h'f N. W.	320		.....	.....
All.....	29	81	26	640	.....	.....	All	640		.....	.....
N. E., N. E. N. W., E. h'f S. E., N. W. S. E.	31	81	26	320	.....	.....	N. E., N. E. N. W., E. h'f S. E., N. W. S. E.	320		.....	.....
All.....	33	81	26	640	.....	.....	All	640		.....	.....
All.....	35	81	26	640	N. W. N. E	40	E. h'f N. E., S. W. N. E., W. h'f, S. E.	600		.....	.....
N. h'f N. E., E. h'f S. E., S. W. S. E., W. h'f S. W., S. E. S. W.	1	82	26	317.96	N. h'f N. E., S. E. S. E., S. h'f S. W.	197.96	N. W. S. W., N. E. S. E., S. W. S. E	120		N. h'f N. E., E. h'f S. E., S. W. S. E., W. h'f S. W., S. E. S. W.	317.96
All.....	3	82	26	648	N. h'f N. E., S. W. N. E., E. h'f N. W., N. W. N. W., E. h'f S. W., W. h'f S. E., S. E. S. E.	448	S. E. N. E., S. W. N. W., W. h'f S. W., N. E. S. E.	200		All.....	648
N. W. N. E., W. h'f N. W., N. E. N. W., W. h'f S. W., S. E. S. W., lots 4, 5, 6, 7, 8.	5	82	26	448.90	N. W. N. E., N. W. N. W., W. h'f S. W., S. E. S. W., lot 4.	245.93	N. E. N. W., S. W. N. W., lots 5, 6, 7, 8.	202.97		N. W. N. E., N. h'f N. W., S. W. N. W., W. h'f S. W., S. E. S. W., lots 4, 5, 6, 7, 8.	448.90
All.....	7	82	26	608	N. h'f S. E.....	240	S. h'f N. E., W. h'f	368		All.....	608
173 All.....	9	82	26	598.46	N. h'f N. E., E. h'f S. W., S. W. S. W., S. h'f S. E., S. W. N. W., lots 3, 5, 7.	443.70	Lots 1, 2, 4, 6, N. W. S. W.....	154.76		All.....	640
E. h'f, N. W.....	11	82	26	480	W. h'f N. E., S. E. N. E., N. h'f N. W., S. W. N. W., N. h'f S. E., S. E. S. E.	360	N. E. N. E., S. E. N. W., S. W. S. E.	120		E. h'f, N. W	480
All.....	13	82	26	640	W. h'f N. W., N. E. S. W., W. h'f S. W.	200	E. h'f, E. h'f N. W., S. E. S. W .	440		All.....	640
All.....	15	82	26	597.58	E. h'f N. E., N. W. N. W., N. h'f S. E., S. E. S. E., lots 5, 6, 7.	363.49	Lots 1, 2, 3, 4, 8.....	234.09		All.....	597.58
All.....	17	82	26	640	N. E., N. E. N. W., S. W., N. E. S. E., W. h'f S. E.	480	N. W. N. W., S. h'f N. W., S. E. S. E.	160		All.....	640
All.....	19	82	26	613.24	W. h'f N. E., S. E. N. W.....	120	E. h'f N. E., N. E. N. W., W. h'f N. W., S. h'f.	493.24		All.....	613.24
All.....	21	82	26	640	N. W. N. E., N. E. N. W., S. h'f N. W., N. h'f S. W., S.	400	N. E. N. E., S. h'f N. E., N. W. N. W., S. h'f S. W.	240		All.....	640
E. h'f, N. W.....	23	82	26	480	W. h'f N. E., W. h'f N. W., N. E. S. E., W. h'f S. E.	280	E. h'f N. E., E. h'f N. W., S. E. S. E.	200		E. h'f, N. W.....	480
All but S. W. S. W., lots 8, 9.	27	82	26	480.36	N. h'f N. W., E. h'f S. E., lots 1, 2, 3, 5, 6, 7.	380.01	S. W. N. W., N. W. S. W., lot 4.	100.35		W. h'f N. W., N. E. N. W., E. h'f S. E., lots 1, 2, 3, 4, 5, 6, 7.	440

Table No 2—Continued.

CERTIFIED UNDER DES MOINES GRANT.					SOLD TO INDIVIDUALS BY THE STATE.		PATENTED TO D. M. N. & R. R. Co.		CERTIFIED AS RAILROAD LANDS.	
Parts of sections.	S.	T.	R.	Acres.	Parts of sections.	Acres.	Parts of sections.	Acres.	Parts of sections.	Acres.
All	29	82	26	640	S. E. N. E., N.W S.W., N. h'f S. E.	160	N. h'f N. E., S. W. N. E., E. h'f S. W., S. W. S. W., N. W., S. h'f S. E.	480	All	640
All	31	82	26	621. 60	E. h'f N. E	80	W. h'f N. E., W. h'f, S. E. q'r	541. 60	All	621. 60
All	33	82	26	640	N. h'f N. E., N. W., S. h'f S. E., N. E. S. E.	360	S. h'f N. E., S. W., N. W. S. E	280	All	640
S. h'f	35	82	26	320	S. h'f	320			S. h'f	320
All	1	83	26	521. 60	W. h'f N. E., N. W. S. W., W. h'f S. E.	391. 20	E. h'f N. E., h'f S. E	130. 40	All	521. 60
W. h'f N. E., W. h'f	3	83	26	314. 86	W. h't N. E., W. h'f	314. 86			W. h'f, W. h'f N. E	314. 86
E. h'f N. E., S. h'f	5	83	26	373	E. h'f S. E., N. W. S. E., E. h'f N. E., S. W. q'r.	333	S. W. S. E	40	S. h'f, E. h'f N. E	373
Lot 2	7	83	26	43. 15	Lot 2	43. 15			Lot 2	43. 15
All	9	83	26	640	All	640			All	640
E. h'f, E. h'f N. W., N. W. N. W., S. h'f S. W.	11	83	26	520	N. W. N. E., E. h'f N. W., N. W. N. W., S. h'f S. W., N. W. S. E.	280	E. h'f N. E., S. W N. E., E. h'f S. E., S. W. S. E.	240	E. h'f, E. h'f N. W., N. W. N. W., S, h'f S. W.	520
174 All	13	83	26	640			All	640	All	640
W. h'f S. W., N. W	15	83	26	240	W. h'f S. W., N. h'f N. W	160	S. h'f N. W	80	N. W., W. h'f S. W	240
N. E., N. h'f N. W., lots 1, 2, 3, 4, 6, 7, 8.	17	83	26	513. 50	N. h'f N. E., N. W. N. W., S. W. N. E., lots 2, 8.	219. 17	S. E. N. E., N. E. N. W., lots 1, 3, 4, 6, 7.	294. 33	N. E., N. h'f N. W., lots 1, 2, 3, 4, 6, 7, 8.	513. 50
All	19	83	26	616. 98	N. h'f	308. 74	S. h'f	308. 24	All	616. 98
All	21	83	26	631. 32	E. h'f, W. h'f N. W., S. h'f S. W	476. 22	E. h'f N. W., N. E. S. W., lot 1	155. 10	All	631. 32
All	23	83	26	640	All but N. E. N. E	600	N. E. N. E	40	All	640
All	25	83	26	640	E. h'f N. W., N. W. N. W	120	E. h'f, S. W., S. W. N. W	520	All	640
All	27	83	26	640	All but N. E. N. E	600	N. E. N. E	40	All	640
All	29	83	26	592. 36	S. E. N. E., N. h'f S. W., S. E. S. W., lots 4, 8, 9.	271. 91	W. h'f N. W., S. W. S. W., lots 1, 2, 3, 5, 6, 7.	320. 45	All	592. 36
All	31	83	26	620	N. E., E. h'f N. W., N. E. S. E., S. h'f S. E.	360	W. h'f N. W., S. W., N. W. S. E.	260	All	620
All	33	83	26	574. 92	E. h'f N. E., E. h'f S. E., S. W. S. W., lots 2, 6, 8.	315. 80	W. h'f N. E., N. W. S. W., lots 1, 3, 4, 5, 7.	259. 12	All	574. 92
W. h'f N. E., N. h'f S. E	35	83	26	560	W. h'f N. E. q'r, N. h'f S. E	560			W. h'f N. E., N. h'f S. E	560
										12, 313. 69
Total				81, 707. 93		41, 089. 66		40, 618. 27		*69, 292. 12

* In the limits of the Mississippi & Missouri Railroad, 34,269. 81; deeded to individuals, 10,974. 48, and to Navigation & Railroad Co., 15,195. 33 acres; and in the limits of the Central Air-line, 35,023. 31; deeded to individuals, 16,804. 44, and to Navigation & Railroad Co., 18,218. 87 acres.

175 TABLE No. 3.—*Showing the lands approved to the State under the Des Moines River grant on the 10th of March, 1862; of those such as have been sold by the State to individuals, and such as have been patented to The Des Moines Navigation and Railroad Company, and such as have since been certified to the State as railroad lands.*

CERTIFIED UNDER DES MOINES GRANT.					SOLD BY THE STATE TO INDIVIDUALS.		PATENTED TO NAVIGATION COMPANY.		CERTIFIED AS RAILROAD LANDS.	
Parts of sections.	S.	T.	R.	Acres.	Parts of sections.	Acres.	Parts of sections	Acres.	Parts of sections.	Acres.
S. W. S. W	31	84	25	42.48			S. W. S. W	42.48	S. W. S. W	42.48
All	3	84	26	713.70			All	713.70	All	713.70
All	5	84	26	718.52	E. h'f, E. h'f N. W., N. W. N. W., S. W. q'r.	598.52	S. h'f S. E. q'r, S. W. N. W	120	All	718.52
All	7	84	26	603.01	N. h'f N. E., S. E. N. E., N. E. N. W., S. E. S. E.	200	N. W. N. E., S. E. N. W., E. h'f S. W., N. h'f S. E., S. W. S. E., lots 1, 2, 3, 4, 5.	403.01	All	603.01
All	9	84	26	640	E. h'f, S. W. N. W., S. W. q'r	520	N. h'f N. W., S. E. N. W	120	All	640
All	11	84	26	640			All	640	All	640
All	15	84	26	640	W. h'f	320	E. h'f	320	All	640
All	17	84	26	640	All except N. W. N. E	600	N. W. N. E	40	All	640
All	19	84	26	624.50	All except N. W. N. E	584.50	N. W. N. E	40	All	624.50
All	21	84	26	640	All	640			All	640
W. h'f, W. h'f N. E., N. E. N. E., W. h'f S. E.	23	84	26	520	S. h'f N. W., S. W. q'r, W. h'f S. E.	320	W. h'f N. E., N. E. N. E., N. h'f N. W.	200	W. h'f, W. h'f N. E. q'r, N. E. N. E., W. h'f S. E.	520
W. h'f S. W	25	84	26	80			W. h'f S. W	80	W. h'f S. W	80
All	27	84	26	640	All	640			All	640
All	29	84	26	640	All	640			All	640
All	31	84	26	599.76	E. h'f N. E., N. W. N. E., S. h'f N. W., S. E. S. E., lot 1.	275.66	S. W. N. E., N. h'f N. W., N. h'f S. E., S. W. S. E,, lots 2, 3.	324.10	All	599.76
All	33	84	26	640	All except W. h'f S. W	560	W. h'f S. W	80	All	640
All	35	84	26	640	S. W. N. W., W. h'f S. W., S. E. S. W., S. h'f S. E.	240	N. E. q'r, E. h'f N. W., N. W. N. W., N. E. S. W., N. h'f S. E.	400	All	640
S. h'f N. W., N. W. N. W., S. W. q'r.	3	85	26	277.28			N. W. N. W., S. h'f N. W., S. W. q'r.	277.28	W. h'f N. W., S. E. N. W., S. W.	277.28
All	5	85	26	629.54			All	629.54	All	629.54
All	7	85	26	611.98			All	611.98	All	611.98
All	9	85	26	640			All	640	All	640
S. W. N. E., W. h'f, W. h'f S. E., S. E. S. E.	15	85	26	480			S. W. N. E., W. h'f, W. h'f S. E., S. E. S. E.	480	W. h'f, W. h'f S. E. q'r, S. E. S. E., S. W. N. E. q'r.	480
176 All	17	85	26	640	S. W. S. W	40	All but S. W. S. W	600	All	640
All	19	85	26	616.30	E. h'f N. E., E. h'f N. W., E. h'f S. E.	240	W. h'f N. E., W. h'f S. E., S. W. q'r, W. h'f N. W.	376.30	All	616.30
All	21	85	26	640			All	640	All	640
W. h'f N. W., S. W. q'r	23	85	26	240			W. h'f N. W., S. W. q'r.	240	W. h'f N. W., S. W	240
All	27	85	26	640			All	640	All	640
All	29	85	26	640	N. h'f, N. E. S. W., S. E. q'r	520	S. h'f S. W., N. W. S. W	120	All	640

Table No. 3—Continued.

CERTIFIED UNDER DES MOINES GRANT.					SOLD TO INDIVIDUALS BY THE STATE.		PATENTED TO D. M. N. & R. R. CO.		CERTIFIED AS RAILROAD LANDS.	
Parts of sections.	S.	T.	R.	Acres.	Parts of sections.	Acres.	Parts of sections.	Acres.	Parts of sections.	Acres.
All	31	85	26	618.16	W. h'f N. E., S. E. N. E., W. h'f N. W., S. E. N W., S. h'f S. E., S. E. S.	348.54	N. E. N. E., N. E. N. W., E. h'f S. E., W. h'f S. W., N. E. S. W.	269.62	All	618.16
All	33	85	26	640	N. E. q'r, E. h'f N. W., S. W. N. W., E. h'f S. W., N. W. S. W., W. h'f S. E., S. E. S. E.	520	N. W. N. W., S. W. S. W., N. E. S. E.	120	All	640
W. h'f N. E., W. h'f, W. h'f S. E.	35	85	26	480			W. h'f N. E., W. h'f, W. h'f S. E.	480	W. h'f, W. h'f N. E., W. h'f S. E.	480
All	3	86	26	625.92			All	625.92		
All	5	86	26	624.86			All	624.86		
All	7	86	26	606.82			All	606.82		
All	9	86	26	640			All	640		
W. h'f N. E., N. E. N. E., W. h'f, W. h'f S. E.	11	86	24	520			W. h'f N. E., N. E. N. E., W. h'f, W. h'f S. E.	520	W. h'f N. E., N. E. N. E., W. h'f, W. h'f S. E.	520
All	15	85	26	640			All	640	All	640
All	17	86	26	640			All	640	All	640
All	19	86	26	607.76			All	607.76	All	607.76
All	21	86	26	640			All	640	All	640
All	29	86	26	640			All	640	All	640
All	31	86	26	607.84			All	607.84	All	607.84
All	33	86	26	640			All	640	All	640
All except W. h'f S. W.	5	87	26	583.98			All except W. h'f S. W.	583.98	All except W. h'f S. W.	583.98
S. h'f	9	87	26	320	S. h'f S. E.	80	S. W. q'r, N. h'f S. E.	240	S. h'f	320
N. h'f	15	87	26	320	S. E. N. E., S. E. N. W.	80	N. h'f N. E., S. W. N. E., N. h'f N. W., S. W. N. W.	240		
All	17	87	26	640	N. W., N. E., W. h'f N. W., N. W. S. W., S. E. S. W., S. h'f S. E.	280	N. E. N. E., S. h'f N. E., E. h'f N. W., N. E. S. W., S. W. S. W., N. h'f S. E.	360		
S. h'f	21	87	26	320	S. E. S. W.	40	S. E. q'r, W. h'f S. W., N. E. S. W.	280		
W. h'f S. E.	23	87	26	80			W. h'f S. E.	80		
E. h'f and S. W. q'r	27	87	26	480			E. h'f S. W. q'r.	480		
E. h'f N. E., W. h'f N. W., W. h'f S. W., E. h'f S. E.	29	87	26	320	S. W. S. W	40	E. h'f N. E., W. h'f N. W., N. W. S. W., E. h'f S. E.	280		
177 All	33	87	26	640			All	640		
All	35	87	26	640			All	640		
S. W. S. W	29	88	26	40			S. W. S. W.	40	S. W. S. W	40
All	31	88	26	580.68			All	580.68	All	580.68
All	1	81	27	593.64			All	593.64	All	593.64

N. E. q'r, E. h'f S. E	11	81	27	240			N. E. q'r, E. h'f S. E	240	N. E. q'r and E. E. h'f S. E.	240	
N. h'f, S.E. q'r, E. h'f S.W.	13	81	27	560			N. h'f, S. E. q'r, E. h'f S. W	560	N. h'f S. E., E. h'f S. W	560	
E. h'f N. E.	25	81	27	80			E. h'f N. E.	80			
All	1	82	27	633. 66			All	633. 66	All	633. 66	
All	3	82	27	639. 68			All	639. 68	All	639. 68	
N. E. q'r, E. h'f S. E	9	82	27	240			N. E. q'r, E. h'f S. E	240	N. E. q'r, E. h'f S. E	240	
All	11	82	27	640			All	640	All	640	
All	13	82	27	640			All	640	All	640	
All	15	82	27	640			All	640	All	640	
All	23	82	27	640			All	640	All	640	
All	25	82	27	640			All	640	All	640	
N. E. N. E.	27	82	27	40			N. E. N. E	40	N. E. N. E.	40	
E. h'f, E. h'f N. W., E. h'f S. W.	35	82	27	480			E. h'f, E. h'f N. W, E. h'f S. W	480	E. h'f, E. h'f N. W., E. h'f S.	480	
All	1	83	27	481. 07	W. h'f N. W., S. W. S. W.; lots 1, 2, 3, 4, 7, 8, 9.	412. 97	Lots 5, 6	68. 10	All	481. 07	
All	3	83	27	528. 04			All	528. 04	All	528. 04	
All	5	83	27	525. 24			All	525. 24	All	525. 24	
All	7	83	27	646. 08			All	646. 08	All	646. 08	
All	9	83	27	640			All	640	All	640	
All	11	83	27	640	S. h'f N. E., N. W. q'r, N. h'f S. E., S. W. S. E.	360	N. h'f N. E., S.E. S. E., S.W. q'r	280	All	640	
All	13	83	27	640	S. W. N. E., N. h'f S. W	120	E. h'f N. E., N. W. N. E., N. W. q'r, S. h'f S. W., S. E. q'r.	520	All	640	
All	15	83	27	640			All	640	All	640	
All	17	83	27	640			All	640	All	640	
All	21	83	27	640			All	640	All	640	
All	23	83	27	640			All	640	All	640	
All	25	83	27	640	N. E. N. E., N. W. q'r, N. h'f S. W.	280	S. h'f N. E., N. W. N. E., S. h'f S. W., S. E. q'r.	360	All	640	
All	27	83	27	640			All	640	All	640	
E. h'f	33	83	27	320			E. h'f	320	E. h'f	320	
178 All	35	83	27	640			All	640	All	640	
All	1	84	27	657. 85	Lots 1, 2, 3	133. 62	W. h'f N. W., S. W. q'r; lots 4, 5, 6, 7, 8.	524. 23	All	657. 85	
All	3	84	27	710. 78	S. E. S. W	40	N. h'f, W. h'f S. W., N. E. S. W., S. E. q'r.	670. 78	All	710. 78	
All	5	84	27	706. 24			All	706. 24	All	706. 24	
All	7	84	27	643. 84			All	643. 84	All	643. 84	
All	9	84	27	640			All	640	All	640	
All	11	84	27	640	S. h'f N. E., S. E. N. W., N. h'f S. W., N. E. S. E.	240	N. h'f N. E., N. h'f N. W., S. W. N. W., S. h'f S. W., S. h'f S. E., N. W. S. E.	400	All	640	
All	13	84	27	585. 56	All but N. W. N. W	545. 56	N. W. N. W	40	All	585. 56	
All	15	84	27	640	S. E. S. W., S. E. S. E	80	N. h'f, N. h'f S. W., S.W. S.W., N. h'f S. E., S. W. S. E.	560	All	640	
All	17	84	27	640			All	640	All	640	
All	19	84	27	643. 84			All	643. 84	All	643. 84	
All	21	84	27	640	S. E. N. E., S. W. S. W., N. E. S. E.	120	N. h'f N. E., S. W. N. E., N. W. q'r, E. h'f S. W., N. W. N. W., S. h'f S. E., N. W. S. E	520	All	640	
All	23	84	27	579. 25	All but lot 8	558. 09	Lot 8	21. 16	All	579. 25	

Table No. 3—Continued.

CERTIFIED UNDER DES MOINES GRANT.					SOLD TO INDIVIDUALS BY THE STATE.		PATENTED TO NAVIGATION COMPANY.		CERTIFIED AS RAILROAD LANDS.	
Parts of sections.	S.	T.	R.	Acres.	Parts of sections.	Acres.	Parts of sections.	Acres.	Parts of sections.	Acres.
All	25	84	27	629.74	N. h'f, N. h'f S. E., N. E. S. W.; lot 2.	471.70	N. W. S. W., S. E. S. E.; lots 1, 2.	158.04	All	629.74
All	27	84	27	635.53	N. E. N. W., E. h'f S. E.; lots 1, 2.	195.53	W. h'f N. E., S. h'f N. W., N. W. N. W., S. W. q'r, W. h'f S. E.	440	All	635.53
All	29	84	27	640			All	640	All	640
All	31	84	27	645.20			All	645.20	All	645.20
All	33	84	27	640			All	640	All	640
All	35	84	27	599.22	S. E. q'r; lots 1, 2, 3	261.25	S. W. N. W., S. W. q'r; lots 4, 5, 6, 7.	337.97	All	599.22
All	1	85	27	627.58	E. h'f S. W., E. h'f S. E	160	N h'f, W. h'f S. E., W. h'f S. W.	467.58	All	627.58
All	3	85	27	582.14	S. E. N. E., N. W. N. W., N. E. S. E.; lot 7.	179.20	N. E. N. E., S. W. S. W.; lots 1, 2, 3, 4, 5, 6, 8.	402.94	All	582.14
All	5	85	27	643.58			All	643.58	All	643.58
All	7	85	27	638.60			All	538.60	All	638.60
All	9	85	27	640	N. E. N. E	40	S. h'f N. E., N. W. N. E., N. W. q'r, S. h'f.	600	All	640
All	11	85	27	590.64	S. E. S. W., W. h'f S. E.; lots 3, 5, 6, 7.	273.31	E. h'f N. E., E. h'f S. E.; lots 1, 2, 4.	317.33	All	590.64
All	13	85	27	640	N. E. q'r, N. W. S. E	200	W. h'f, S. h'f N. E., N. E. N. E.	440	All	640
All	15	85	27	605.51	E. h'f S. E	80	W. h'f N. W., S. E. N. W., S. W. q'r, W. h'f S. E.; lots 1, 3, 4.	525.51	All	605.51
All	17	85	27	640			All	640	All	640
All	19	85	27	644.80			All	644.80	All	644.80
All	21	85	27	640			All	640	All	640
All	23	85	27	617.57	E. h'f N. E	80	W. h'f N. E., S. E. N. W., S. h'f; lots 1, 2, 3.	537.57	All	617.57
All	25	85	27	640	N. E. N. E., N. W. q'r, S. E. S. W., N. W. S. E.	280	W. h'f N. E., S. E. N. E., N. h'f S. W., S. W. S. W., E. h'f S. E., S. W. S. E.	360	All	640
179 All	27	85	27	597.60	S. W. S. W.; lots 5, 7	140.54	W. h'f N. W., N. E. N. W., N. W. S. W., S. E. S. E.; lots 1, 2, 3, 4, 6, 8.	457.06	All	597.60
All	29	85	27	640			All	640	All	640
All	31	85	27	645.40			All	645.40	All	645.40
All	33	85	27	640			All	640	All	640
All	35	85	27	621.60	S. h'f N. E	80	N. h'f N. E., W. h'f, N. W. S. E.; lots 1, 2, 3.	541.60	All	621.60
E. h'f S. E., S. W. S. E., lots 5, 6, 7, 8.	1	86	27	326.39			E. h'f S. E., S. W. S. E.; lots 5, 6, 7, 8.	326.39		

All	3	86	27	574.46	S. E. S. E.; lots 6, 7	157.35	N. W. N. E., N. W. q'r, N. W. S. W.; lots 1, 2, 3, 4, 5.	417.11		
All	5	86	27	627.58			All	627.58		
All	7	86	27	629.60			All	629.60		
All	9	86	27	640			All	640		
N. h'f	11	86	27	320			N. h'f	320		
All	13	86	27	640			All	640	All	640
All	15	86	27	630.65	S. E. N. E., N. E. S. W.	80	N. h'f N. E., S. W. N. E., S. E. N. W., S. h'f S. W., N. W. S. W., S. E. q'r; lot' 1, 2, 3	550.65		
All	17	86	27	640			All	640		
All	19	86	27	632.60			All	632.60	All	632.60
All	21	86	27	596.88	Lots 3, 4	60.38	N. W. q'r, W. h'f S. W., S. E. S. W.; lots 1, 2, 5, 6, 7, 8	536.50	All	596.88
All	23	86	27	640	S. W. S. W	40	All but S. W. S. W	600	All	640
All	25	86	27	640			All	640	All	640
All	27	86	27	591.16	N. h'f N. E.; lot 1	111.13	N. W. N. E., W. h'f S. W., N. E. S. E.; lots 2, 3, 4, 5, 6, 7, 8	480.03	All	591.16
All	29	86	27	640			All	640	All	640
All	31	86	27	634.72			All	634.72	All	634.72
All	33	86	27	640			All	640	All	640
All	35	86	27	640	E. h'f N. W., N. h'f S. E., S. E. S. E.	200	N. E. q'r, W. h'f N. W., S. W. q'r, S. W. S. E. q'r.	440	All	640
N. h'f, E. h'f S. E.	1	87	27	426.44	S. h'f N. E., S. h'f N. W	160	N. h'f N. E., N. h'f N. W., E. h'f S. E.	266.44	N. h'f, E. h'f S. E. q'r	426.44
All	3	87	27	673.90			All	673.90	All	673.90
All	5	87	27	681.60			All	681.60	All	681.60
W. h'f and S. E. q'r	7	87	27	480			W. h'f S. E. q'r	480	W. h'f, S. E. q'r.	444.30
S. h'f	9	87	27	320			S. h'f	320	S. h'f	320
180 W. h'f	11	87	27	320	N. h'f N. W., W. h'f S. W	160	N. h'f N. W., E. h'f S. W	190	W. h'f	320
Lots 1, 2, 5, 6, 7, 8, E. h'f N. E., S. W. N. W., W. h'f S. W.	15	87	27	472.80	S. W. N. W., S. W. S. W., lots 7, 8.	182.20	E. h'f N. E., N. W. S. W., lots 1, 2, 3, 4, 5, 6.	290.60		
All	17	87	27	611.25			All	611.25		
All	21	87	27	587.82			All	587.82		
Lots 1, 2, 3, and S. W. S. W.	23	87	27	121	Lots 2, 3	79.10	S. W. S. W., lot 1	41.90		
E. h'f	27	87	27	320			E. h'f	320		
W. h'f	33	87	27	320			W. h'f	320		
All	35	87	27	640			All	640		
S. W. N. W., W. h'f S. W.	3	88	27	120			S. W. N. W., W. h'f S. W	120	S. W. N. W., W. h'f S. W	120
All	5	88	27	701.30			All	701.30	All	701.30
All	7	88	27	598.86			All	598.86	All	598.86
All	9	88	27	640			All	640	All	640
W. h'f, W. h'f N. E., W. h'f S. E.	15	88	27	480			W. h'f N. E., W. h'f S. E., W. h'f	480	W. h'f N. E., W. h'f, W. h'f S. E.	480
All	17	88	27	640			All	640	All	640
All	19	88	27	599.10			All	599.10	All	599.10
All	21	88	27	640			All	640	All	640
S. h'f, S. h'f N. E., S. h'f N. W.	23	88	27	480			S. h'f, S. h'f N. E., S. h'f N. W	640	S. h'f, S. h'f N. E., S. h'f N. W.	480
All	25	88	27	640			All	640	All	640

Table No. 3—Continued.

CERTIFIED UNDER DES MOINES GRANT.					SOLD TO INDIVIDUALS BY THE STATE.		PATENTED TO D. M. N. & R. R. CO.		CERTIFIED AS RAILROAD LANDS.	
Parts of sections.	S.	T.	R.	Acres.	Parts of sections.	Acres.	Parts of sections.	Acres.	Parts of sections.	Acres.
All	27	88	27	640			All	640	N. h'f, N. h'f S. W., S. W. S. W., N. W. S. E.	480
All	29	88	27	640			All	640	All	640
E. h'f N. E., W. h'f N. W., S. W q'r.	31	88	27	285. 28	W. h'f N. W., S. E. S. W.	101. 92	E. h'f N. E., N. E. S. W., W. h'f S. W.	183. 36	E. h'f N. E., W. h'f N. W., S. W. q'r.	301. 92
All	33	88	27	640			All	640	All	640
All	35	88	27	640			All	640	N. h'f S. E., N. h'f S. W. N. h'f.	480
W. h'f, W. h'f N. E., S. E. q'r.	19	89	27	583			W. h'f, W. h'f N. E., S. E. q'r.	53. 92	W. h'f, W. h'f N. E., S. E. qr.,	583. 92
S. h'f S. W	21	89	27	80			S. h'f S. W	80	S. h'f S. W	80
S. h'f N. W., S. W. q'r, W. h'f S. E., S. E. S. E.	27	89	27	360			S. h'f N. W., S. W., W. h'f S. E., S. E. S. E.	360	S. h'f N. W., S. W., W. h'f S. E., S. E. S. E.	360
All	29	89	27	640			All	640	All	640
All	31	89	27	663. 72			All	663. 72	All	663. 72
All	33	89	27	640			All	640	All	640
W. h'f N. W., S. E. N. W., S. W. q'r, W. h'f S. E.	35	89	27	360			W. h'f N. W., S. E. N. W., S. W., W. h'f S. E.	360	W. h'f N. W., S. E. N. W., W. h'f S. E., S. W.	360
E. h'f, N. h'f N. W., N. E. S. W.	1	83	28	352. 25			E. h'f, E. h'f N. W. fr., N. E. S. W.	352. 25	E. h'f, E. h'f N. W., N. E. S. W.	352. 25
All	1	84	28	696. 26			All	696. 26	All	696. 26
E. h'f N. E.	11	84	28	80			E. h'f N. E	80	E. h'f N. E	80
E. h'f, E. h'f N. W., E. h'f S. W.	13	84	28	480			E. h'f, E. h'f N. W., E. h'f S. W.	480	E. h'f, E. h'f N. W., E. h'f S. W.	480
All	25	84	28	640			All	640	All	640
All	1	85	28	645. 60			All	645. 60	All	645. 60
E. h'f.	11	85	28	320			E. h'f.	320	E. h'f.	320
All	13	85	28	640			All	640	All	640
181 E. h'f N. E., E. h'f S. E., S. W. S. E.	23	85	28	200			E. h'f N. E., E. h'f S. E., S. W. S. E.	200	E. h'f N. E., E. h'f S. E., S. E. S. E.	200
All	25	85	28	640			All	640	All	640
E. h'f	35	85	28	320			E. h'f	320	E. h'f	320
All	1	86	28	627. 88			All	627. 88		
N. h'f, N. E. S. W., S. E.	3	86	28	503. 02			N. h'f, N. E. S. W., S. E. q'r	503. 02		
All	11	86	28	640			All	640		
All	13	86	28	640			All	640		
E. h'f N. E., E. h'f S. E.	15	86	28	160			E. h'f N. E., E. h'f S. E.	160	1 h'f N. E., E. h'f S. E. q'r.	160
All	23	86	28	640			All	640	All	640
All	25	86	28	640			All	640	All	640
E. h'f N. E., E. h'f S. E.	27	86	28	160			E. h'f N. E., E. h'f S. E.	160	E. h'f N. E., E. h'f S. E. q'r.	160
All	35	86	28	640			All	640	All	640

All	1	87	28	622.58
N. h'f, S. W q'r	3	87	28	518.28
All	5	87	28	673.98
All	7	87	28	621.98
All	9	87	28	640
W. h'f, S. E. q'r.	11	87	28	480
All	13	87	28	640
All	15	87	28	640
All	17	87	28	640
All	21	87	28	640
All	23	87	28	640
All	25	87	28	640
All	27	87	28	640
N. h'f N. E., S. E. N. E., N. E. S. E.	29	87	28	160
N. E. q'r., N. E. N. W., N. h'f S. E., S. E. S. E.	33	87	28	320
All	35	87	28	640
All	1	88	28	709.10
All	3	88	28	719.64
N. h'f, lot 4	5	88	28	439.87
S. E. q'r	7	88	28	160
All	9	88	28	640
S. W. q'r, S. h'f N. W.	11	88	28	240
182 N. h'f, S. E. q'r	13	88	28	480
All	15	88	28	599.68
N. h'f, S. E., E. h'f S. W.	17	88	28	510.55
W. h'f, S. E. q'r, W. h'f N. E.	19	88	28	541.58
N. h'f	21	88	28	320
All	23	88	28	606.68
W. h'f	25	88	28	320
All	27	88	28	619.88
All	29	88	28	640
All	31	88	28	619.08
S. W. q'r.	33	88	28	160
All	35	88	28	593.25
W. h'f, S. W. N. E., W. h'f S. E.	1	89	28	414.03
All	3	89	28	589.02
All	5	89	28	606.16
All	7	89	28	312.99
All	9	89	28	640
All	11	89	28	640
W. h'f, W. h'f N. E., W. h'f S. E., S. E. S. E.	13	89	28	520

S. W. N. W., lot 8		93.35
S. h'f S. W., S. h'f S. E., lot 4		218.88
N. W. q'r, W. h'f S. W		240
Lot 1		32.60
E h'f N. E		80

N. E. N. E., W. h'f S. W., lots 1, 2, 3, 4, 5, 6, 7, 9, 10.		529.23
N. h'f, S. W. q'r		518.28
All		673.98
All		621.98
All		640
W. h'f, S. E. q'r		480
All		640
All		640
All		640
All		640
All		640
All		640
All		640
W. h'f N. E., S. E. N. E., N. E. S. E.		160
N. E. q'r, N. E. N. W., N. h'f S. E., S. E. S. E.		320
All		640
All		709.10
N. h'f, S. E		559.64
N. h'f		401.44
S. E. q'r		160
S. h'f		320
S. W. qr., S. h'f N. W		240
N. h'f, S. E. q'r		480
N. W. N. W., S. h'f S. ., S. W. S. E., lot 7.		205.55
N. E. q'r		160
W. h'f, S. E. q'r, W. h'f N. E.		541.58
N. h'f		320
S. E. N. E., N. h'f S. E., lots 1, 2, 3, 5, 6, 7.		387.80
E. h'f S. W		80
S. h'f, S. h'f N. W., N. W. N. W., lots 2, 3, 4.		587.28
All		640
All		619.08
S. W		160
W. h'f N. W., W. h'f S. W., N. E. S. E., lots 1, 2, 3, 4, 5, 6, 7, 8.		513.25
W. h'f, S. W. N. E., W. h'f S. E		414.03
All		589.02
All		606.16
N. E. N. E., lots 1, 2, 3, 4, 5, 6		312.99
All		640
All		640
W. h'f, W. h'f N. E., W. h'f S. E., S. E. S. E.		520

All	622.58
W. h'f, N. E. q'r	518.28
All	673.98
All	621.98
All	640
W. h'f, S. E. q'r	480
All	709.10
All	719.64
N. h'f, lot 4	439.87
S. E. q'r	160
All	640
S. h'f, N. W., S. W	240
N. h'f, S. E. q'r	480
All	599.68
N. E. h'f, S. E., E. h'f S. W.	510.55
S. h'f, N. W., W. h'f N. E.	541.58
N. h'f	320
All	606.68
W. h'f	320
All	619.88
All	640
All	619.08
S. W	160
Lots 3, 4, 5, 6, N. h'f, W. h'f S. W., N. E. S. E.	593.25
W. h'f, S. W. N. E., W. h'f S. E. q'r.	414.63
All	589.02
All	606.16
Lots 1, 2, 3, 4, 5, 6, N. E. N. E.	312.99
All	640
All	640
W. h'f, W. h'f N. E., W. h'f S. E., S. E. S. E.	520

Table No 3—Continued.

CERTIFIED UNDER DES MOINES GRANT.					SOLD TO INDIVIDUALS BY THE STATE.		PATENTED TO D. M. N. & R. R. CO.		CERTIFIED AS RAILROAD LANDS.	
Parts of sections.	S.	T.	R.	Acres.	Parts of sections.	Acres.	Parts of sections.	Acres.	Parts of sections.	Acres.
All	15	89	28	640			All	640	All	640
All	17	89	28	640	W. h'f N. W., W. h'f S. W., S. E. S. W.	200	E. h'f, E. h'f N. W., N. E. S. W.	440	All	640
All	21	89	28	640			All	640	All	640
All	23	89	28	640			All	640	All	640
All	25	89	28	640			All	640	All	640
All	27	89	28	640			All	640	All	640
All	29	89	28	558. 21	N. h'f N. E., E. h'f N. W., N. W. N. W., lots 1, 2.	318. 21	S. h'f N. E., S. E. q'r	240	Lots 1, 2, 3, 4, N. E., E. h'f N. W., N. W. N. W.	455. 91
All (fr.)	31	89	28	1. 41			Lot 1	1. 41	Lot 1	1. 41
All	33	89	28	640			All	640	All	640
All	35	89	28	640			All	640	All	640
W. h'f, W. h'f N. E., W. h'f S. E.	1	90	28	469. 75			W. h'f, W. h'f N. E., W. h'f S. E.	469. 75		
All	3	90	28	642. 18			All	642. 18		
All	5	90	28	638. 94			All	638. 94		
All	7	90	28	640. 54	S. W. S. W.	40. 15	All except S. W. S. W.	600. 39	All	640. 54
All	9	90	28	640			All	640	All	640
All	11	90	28	640			All	640	S. h'f	320
W. h'f N. W.	13	90	28	80			W. h'f N. W.	80	W. h'f N. W.	80
183 All	15	90	28	640			All	640	All	640
All	17	90	28	640			All	640	All	640
All	19	90	28	640. 13			All	640. 13	All	640. 13
All	21	90	28	640			All	640	All	640
All	23	90	28	640			All	640	All	640
S. W. N. W., W. h'f S. W.	25	90	28	120			S. W. N. W., W. h'f S. W.	120	W. h'f S. W., S. W. N. W.	120
All	27	90	28	640			All	640	All	640
All	29	90	28	640			All	640	All	640
All	31	90	28	490. 27			E. h'f, lots 1, 2, 3, 4	490. 27	All	490. 27
All	33	90	28	640			All	640	All	640
All	35	90	28	640			All	640	All	640
Total				143, 908 37		17, 477. 39		126, 430. 90		*120, 245. 15

* In the limits of the Iowa Central Air-line Railroad, 74,279. 78 acres; sold to individuals, 13,542. 50, and to Des Moines Navigation & Railroad Company, 60,737.28 acres, and in limits of Dubuque & Sioux City Railroad, 45,965.37 acres; sold to individuals, 2,988.22, and to Des Moines Navigation & Railroad Company, 42,977.15 acres.

184 TABLE No. 4.—*Exhibiting the lands certified and approved to the State under the Des Moines grant, on the 17th December, 1853; those sold by the State to individuals; those patented by the State to The Des Moines Navigation and Railroad Company; and those subsequently certified and approved as railroad lands.*

CERTIFIED UNDER DES MOINES GRANT.					SOLD BY THE STATE TO INDIVIDUALS.		PATENTED TO NAVIGATION COMPANY.		CERTIFIED UNDER THE RAILROAD GRANT.	
Parts of sections.	S.	T.	R.	Acres.	Parts of sections.	Acres.	Parts of sections.	Acres.	Parts of sections.	Acres.
All	19	89	28	446.84	All	446.84			All	446.84
S. h'f, N. W. q'r, S.W. N. E., lot 1, 2.	5	91	27	599.67			All	599.67		
All	7	91	27	668.54			All	668.54		
W. h'f N. W	31	91	27	97.00			W. h'f N. W	97.00		
All	5	92	27	691.80			All	691.80		
All	7	92	27	658.24			All	658.24		
All	9	92	27	640.00			All	640.00		
W. h'f N. W	15	92	27	80.00			W. h'f N. W	80.00		
All	17	92	27	640.00			All	640.00		
All	19	92	27	665.92			All	665.92		
All	21	92	27	615.65			All	615.65		
All	29	92	27	639.84			All	639.84		
All	31	92	27	668.68			All	668.68		
All	1	91	28	635.52			All	635.52		
All	3	91	28	627.42			All	627.42		
All	5	91	28	636.08			All	636.08		
Lots 1 and 2	7	91	28	32.00			Lots 1 and 2	32.00		
All	9	91	28	640.00			All	640.00		
All	11	91	28	640.00			All	640.00		
All	13	91	28	640.00			All	640.00		
All	15	91	28	640.00			All	640.00		
Lots 1, 2, E. h'f, E. h'f N. W., S. W. q'r.	17	91	28	626.60			E. h'f, E. h'f N. W., N. W. q'r, lots 1, 2.	626.60		
Lots 1, 2, 3, 4	19	91	28	188.30			Lots 1, 2, 3, 4	188.30		
All	21	91	28	640.00			All	640.00		
All	23	91	28	640.00			All	640.00		
All	25	91	28	640.00			All	640.00		
All	27	91	28	640.00			All	640.00		
Lots 1, 2, 3, 4, E. h'f, E. h'f N. W., N. E. S. W.	29	91	28	612.25			All	612.25		
185 Lot 1	31	91	28	35.70			Lot 1	35.70		
All	33	91	28	640.00			All	640.00		
All	35	91	28	640.00			All	640.00		
All	1	92	28	690.80			All	690.80		
Lots 1, 2, 3, N. E. q'r, E. h'f N.W., N. W. N. W., E. h'f S. E., N. W. S. E.	3	92	28	564.44			All	564.44		
N. h'f, S. E., lots 1 and 2.	11	92	28	598.80			N. h'f, S. E. q'r, lots 1, 2	598.80		

Table No. 4—Continued.

CERTIFIED UNDER DES MOINES GRANT.					SOLD BY THE STATE TO INDIVIDUALS.		PATENTED TO NAVIGATION COMPANY.		CERTIFIED UNDER THE RAILROAD GRANT.	
Parts of sections.	S.	T.	R.	Acres.	Parts of sections.	Acres.	Parts of sections.	Acres.	Parts of sections.	Acres.
All	13	92	28	640.00			All	640.00		
Lots 1 and 2	15	92	28	18.70			Lots 1 and 2	18.70		
All	23	92	28	640.00			All	640 00		
All	25	92	28	640.00			All	640.00		
Lots 1 2, 3, 4, S. E. N. E., S. E. q'r.	27	02	28	415.18			S. E. N. E., S. E. q'r, lots 1, 2, 3, 4.	415.18		
Lot 1	31	92	28	20.90			Lot 1	20.90		
S. h'f N. E., S. h'f, lots 1, 2, 3, 4.	33	92	38	581.52			S. h f N. E.,S. h'f, lots 1, 2, 3, 4.	581.62		
All	35	92	28	640.00			All	640.00		
All	1	87	29	668.16			All	668.16	All	668.16
N. E. N. E.	3	87	29	46.90			N. E. N. E.	46.90	N. E. N. E.	44.42
All	1	88	29	679.73			All	679.73	All	688.39
All	3	88	29	733.18			All	733.18	All	727.92
All	5	88	29	740.10			All	740.10	All	733.08
All	7	88	29	613.28			All	613.28	All	612.48
All	9	88	29	640.00			All	640.00	All	640.00
All	11	88	29	640.00			All	640.00	All	640.00
All	13	88	29	640.00			All	640.00	All	640.00
All	15	88	29	640.00			All	640.00	All	640.00
All	17	88	29	640.00			All	640.00	All	640.00
All	21	88	29	640.00			All	640.00	All	640.00
All	23	88	29	640.00			All	640.00	All	640.00
All	25	88	29	640.00			All	640.00	All	640.00
All	27	88	29	640.00			All	640 00	All	640.00
N. h'f N. E.	29	88	29	80.00			N. h'f N. E.	80.00	N. h'f N. E.	80.00
All	35	88	29	640.00			All	640.00	All	640.00
Lots 1, 2, and 3, S. E. S. E.	1	89	29	149.10			S. E. S. E., lots 1, 2, 3	149.10	S. E. S. E., lots 1, 2, 3	149.19
Lot 1	1	90	29	4.15			Lot 1	4.15	Lot 1	4.15
Lots 1, 2. 3, 4, S. E. N. E., S. E. q'r.	13	90	29	406.90			S. E. N. E., S. E. q'r, lots 1, 2, 3, 4	406.90	Lots 1, 2, 3, 4, S. E. N. E., S. E.	406.84
186 Lots 1 and 2	25	90	29	73.88			Lots 1 and 2	73.88	Lots 1 and 2	73.88
E. h'f, N. E, E. h'f S. E.	11	88	30	186.56			E. h'f N. E., E. h'f S. E.	186.56	E. h'f N. E., E. h'f S. E. q'r.	186.56
Total				33,142.43		446.84		32.695.59		*11,221.82

*All within the limits of the Dubuque and Sioux City Railroad Company.

187 TABLE NO. 5.—*Exhibiting the lands certified as a part of the Des Moines River grant on the 30th December, 1853, which had previously been approved to the State as a part of the 500,000-acre grant; showing, also, such as were sold as school lands by John Tolman, school fund commissioner of Webster County. Also, such as have been patented by the State to "The Des Moines Navigation and Railroad Company;" and the few tracts, the contracts for the sale of which, as school land, have been canceled under the act of April 2, 1860, and the amount of money refunded by the State to purchasers therefor.*

APPROVED TO THE STATE UNDER DES MOINES GRANT.					SOLD BY JOHN TOLMAN AS SCHOOL LANDS.		PATENTED TO D. M. N. & R. R. CO.		CONTRACTS CANCELED AND MONEY REFUNDED.		
Parts of sections.	S.	T.	R.	Acres.	Parts of sections.	Acres.	Parts of sections.	Acres.	Parts of sections.	Acres.	Am't.
W. h'f S. W	5	87	26	80	W. h'f S. W	80	W. h'f S. W	80	W. h'f S. W	80	$107 13
All	7	87	26	597.92	All	597.92	All	597.92	N. W. q'r	137.64	321 90
N. h'f	9	87	26	320			N. h'f	320			
S. h'f	15	87	26	320	S. E. q'r	160	S. h'f	320			
All	19	87	26	609.18	N. W. N. W., S. h'f S. W. S. h'f S. E.	184.74	All	609.18	S. h'f S. W., W. h'f of S. W. of S. E.	92.37	116 96
N. h'f	21	87	26	320	N. E. N. W	40	N. h'f	320			
W. h'f	23	87	26	320			W. h'f	320			
N. W. q'r	27	87	26	160			N. W. q'r	160			
W. h'f N. E., E. h'f N. W	29	87	26	160			W. h'f N. E., E. h'f N. W	160			
W. h'f S. E., E. h'f S. W	29	87	26	160	S. E. S. W	40	W. h'f S. E., E. h'f S. W	160			
All	31	87	36	605.92	All	605.92	All	605.92	N. E. q'r, E. h'f N. W	240	302 93
N. h'f N. W., lots 1, 2, 3, 4	1	86	27	241.56	N. E. N. W., lots 1, 2, 3, 4	204.92	N. h'f N. W., lots 1, 2, 3, 4	241.56			
S. h'f	11	86	27	320	W. h'f S. W	80	S. h'f	320			
S. W. q'r, W. h'f S. E	1	87	27	240	N. h'f S. W., W. h'f S. E	160	S. W. q'r, W. h'f S. E	240			
N. E. q'r	7	87	27	160	W. h'f N. E	80	N. E. q'r	160			
N. h'f	9	87	27	320			N. h'f	320			
E. h'f	11	87	27	320	E. h'f N. E	80	E. h'f	320			
All	13	87	27	640	S. E. N. E	40	All	640			
Lots 3, 4	15	87	27	113.90	Lot 4	62.50	Lots 3, 4	113.90			
All	19	87	27	618.40			All	618.40			
N. E. q'r, N. E. N. W., E. h'f S. E., lots 4, 5, 6, 7, 8.	23	87	27	475.50	S. E. S. E., lot 8	76.75	N. E. q'r, N. E. N. W., E. h'f S. E., lots 4, 5, 6, 7, 8.	475.50			
N. E. q'r, E. h'f N. W., N. W. N. E., N. h'f S. E., S. E. S. E., lots 1, 2, 3, 4, 5.	25	87	27	604.25	N. h'f N. E., E. h'f N. W., N. W. N. W., lots 1, 2, 4, 5.	382.05	N. E. q'r, E. h'f N. W., N. W., N. h'f S. E., S. E. S. E., lots 1, 2, 3, 4, 5.	604.25			
188 W. h'f	27	87	27	320			W. h'f	320			
All	29	87	27	640			All	640			
All	31	87	27	626.44			All	626.44			
E. h'f	33	87	27	320			E. h'f	320			
W. h'f S. E., E. h'f N. W., S. E. q'r.	31	88	27	320	W. h'f S. E	80	W. h'f N. E., E. h'f N. W. S. E. q'r.	320	W. h'f S. E	80	$100 56
S. E. q'r	3	87	28	160			S. E. q'r	160			
N. E. q'r	11	87	28	160			N. E. q'r	160			
E. h'f S. E., N. W. S. E., lots 1, 2, 3	5	88	58	252.44	E. h'f S. E., N. W. S. E	120	E. h'f S. E., N. W. S. E., lots 1, 2, 3.	252.44			

Table No. 5.—Continued.

APPROVED TO THE STATE UNDER DES MOINES GRANT.					SOLD BY JOHN TOLMAN AS SCHOOL LANDS.		PATENEED TO D. M. N. & R. R. CO.		CONTRACTS CANCELLED AND MONEY REFUNDED.		
Parts of sections.	S.	T.	B.	Acres.	Parts of sections.	Acres.	Parts of sections.	Acres.	Parts of sections.	Acres.	Am't.
W. h'f N. E. q'r	7	88	28	468			W. h'f N. E. q'r	468			
E. h'f, N. h'f N. W	11	88	28	400			E. h'f, N. h'f N. W	400			
S. W. q'r	13	88	28	160	S. W. q'r	160	S. W. q'r	160			
W. h'f S. W	17	88	28	80	N. W. S. W	40	W. h'f S. W	80			
E. h'f N. E	19	88	28	80			E. h'f N. E	80			
S. h'f	21	88	28	320			S. h'f	320			
E. h'f	25	88	28	320	N. h'f S. E., S. E. S. E	120	E. h'f	320			
N. h'f, S. E. q'r	23	88	28	480			N. h'f, S. E. q'r	480			
Total				12,813 51		3,194.28		12,813.51		630.01	$949 50

189 For the purpose of effecting an adjustment between the State of Iowa and the General Government, the eleventh general assembly passed the following act:

An act providing for the adjustment of certain land claims with the General Government.

Whereas the excess of land certified to the State over and above the amount it was entitled to receive under the act of Congress of September 4, 1841, known as the 500,000-acre grant, has not been reconveyed nor satisfaction therefor rendered to the General Government; and

Whereas the lands falling to the State, under the joint resolutions of Congress of March 3d, 1861, entitled "Joint resolutions to quiet titles in the State of Iowa," and under the act of Congress entitled "An act confirming a land claim in the State of Iowa and for other purposes," approved July 12th, 1862, have not yet been certified or approved to the State; and

Whereas the claims of the State against the United States, arising under the swamp land grant, remain to a very great extent in an unsettled and unsatisfactory condition; and

Whereas the interests of the State and her grantees demand a speedy settlement of all said matters; therefore

SECTION 1. *Be it enacted by the general assembly of the State of Iowa*, That Josiah A. Harvey, register of the State land office, be, and is hereby, appointed a commissioner on behalf of the State of Iowa, to adjust with the General Government all the matters and claims aforesaid.

SEC. 2. Said commissioner shall proceed to Washington City, and present said claims to the Department of the Interior, and urge the same to settlement as early and as speedily as may be consistent with the interest of the State, and he is hereby authorized to adjust the
190 said excess of the 500,000-acre grant, by permitting the United States to retain out of the indemnity land falling to the State under said act of Congress of July 12th, 1862, an amount equivalent to such excess: *Provided*, That nothing herein contained shall be construed to be a relinquishment of the claim of the State under the said 500,000-acre grant to the $12{,}813\frac{51}{100}$ acres selected as part of such grant, and subsequently rejected from a supposed conflict with the act of Congress approved August, 1846, known as the Des Moines River grant, and the said commissioner is hereby instructed to secure a restoration of said selections as a part of the 500,000-acre grant, and a confirmation of the title of the State thereto, as a part of such grant.

SEC. 3. As soon as the claim or claims, or matters of difference, under any one of said acts, shall be adjusted, said commissioner shall report the same to the census board, setting forth the terms and mode of adjustment, and said board shall examine and pass upon said adjustment, so presented, and the approval of a majority of said board shall make the settlement of said matters or claims final and binding upon the State of Iowa. Such approval shall be in writing, signed by the members of said board agreeing thereto, and attested by the great seal of the State of Iowa.

SEC. 4. Said commissioner shall receive as his compensation two dollars per day for the time actually engaged in the discharge of the duties by this act imposed, with his necessary expenses in attending to the same, and his account for such time and expenses, made out from time to time, or at the conclusion of his services as such commissioner, and

sworn by him, shall be presented to the census board for allowance, and if approved and allowed by them, the auditor of state shall draw his warrant on the State Treasurer, who shall pay the same out of the general revenue of the State.

SEC. 5. The amount of expenses incurred and paid out of the treasury, as provided in the preceding section, in carrying out the provision of this act, shall be approved by the census board, as nearly as practicable, pro rata among the parties receiving, or entitled to receive, the benefits resulting from the adjustment of said several matters
191 with the General Government, and the amount thus apportioned shall be paid into the State treasury by such parties respectively before they shall be entitled to receive the proceeds or benefits of such settlement.

SEC. 6. All indemnity scrip received from the General Government, and all swamp lands patented to the State shall be conveyed to the counties to which they belong, and all money and indemnity scrip received from the Government shall be placed under the control of the board of supervisors of the several counties to which they belong, leaving the counties thereof through their respective boards of supervisors to settle with their grantees.

SEC. 7. This act being deemed of immediate importance, shall take effect from and after its publication in the Iowa State Register and the Iowa Homestead, newspapers published at Des Moines.

Approved March 30, 1866.

By virtue of the provisions of this act, Mr. Harvey, as the commissioner for the State, proceeded to Washington, effected a settlement with the General Government, of the Des Moines River lands and the excess selections of the 500,000-acre grant, and reported the same to the census board, which settlement was approved by said board, and the following is a copy thereof:

191*a* WASHINGTON CITY, *May* 21, 1866.

Pursuant to the authority conferred by the act of the State of Iowa, approved March 30, 1866, "for the adjustment of certain land claims with the General Government," I, Josiah A. Harvey, register of the State land office, and as commissioner on behalf of the State, do hereby assent to the adjustment as herein stated, the said adjustment to be held as binding and conclusive on the said State as provided in said act.

JOSIAH A. HARVEY,
Register of the State Land Office, and Commissioner on behalf of the State of Iowa.

WASHINGTON CITY, D. C., *May* 23, 1866.

To the honorable census board of the State of Iowa, Des Moines:

Pursuant to the requirements of chapter 79 of the acts of the 11th general assembly, I have the honor to report that I have consummated an adjustment with the United States, of the excess of lands received by the State under the grant of Sept. 4, 1841; also the lands confirmed to the State by the joint resolution of March 2d, 1861, and the lands falling to the State under the act of Congress of July 12th, 1862, and transmit herewith for your approval a copy of the agreement containing the terms of said adjustment.

It will be observed that the State in this settlement is credited with

the whole amount of land in odd-numbered sections and lying within five miles of the Des Moines, from the Raccoon Fork to the northern boundary of the State, determined to be 558,004.06 acres.

The State is then charged with the several quantities of land following, to wit:

1st.	Indemnity land selected under special certificate dated April 25th, 1863	297,603.74 acres.
2d.	Remaining lands in place yet to be certified	167,109.02 acres.
3d.	Lands in place confirmed by the joint resolution of March 2d, 1861	44,838.64 acres.
4th.	Lands selected and heretofore certified on the east fork of the Des Moines River and more than five miles from the Western or main branch	11,661.80 acres.
5th.	The excess selected and approved to the State as a part of the 500,000-acre grant under act of Sept. 4, 1841	35,473.54 acres.
	Making in all 556,686.74 acres, and leaving due to the State to balance the whole amount of the grant	1,317.32 acres.

For this balance a special certificate will be issued.

191*b* The 11,661.80 acres on the east branch of the Des Moines River, heretofore approved to the State as a part of the Des Moines River grant, and disposed of by the State as such, are held by the Department, under the decision of the Attorney General, to be a legitimate and proper offset to so much of this grant; hence they are charged to the State in this settlement.

The 35,473.54 acres charged in excess under the 500,000-acre grant, (act 1841,) includes the 22,660.05 acres over and above the 500,000 acres which is embraced in the book of diagrams approved and certified to the State on the 12th of September, 1854, and which has hitherto been considered as the excess and also the 12,813.51 acres, which were once approved as a part of the 500,000-acre grant and afterward rejected, and approved and certified as a part of the Des Moines River grant. These lands have been known as the river school lands. Notwithstanding that they have been disposed of as a part of the Des Moines River lands by the State, said chapter 79 requires that they shall be included and certified as a part of the grant of 1841.

Deeming it my duty to carry out the provisions of the law, regardless of my personal opinion as to their correctness or propriety, I have thus included these lands, thereby increasing said excess to 35,473.54 acres, and allowed them to be deducted from the amount of the Des Moines River grant due the State, as the Department had determined.

The necessary and proper lists according to the terms of this adjustment will be made and approved by the Secretary and delivered to me or sent to the State.

In the preparation of these lists all lands which appear at the General Land Office as having been selected as swamp under act of September 28, 1850, and all tracts to which pre-emption rights had attached prior to July 12, 1862, will be excluded.

If, however, any of the tracts thus listed and certified shall be found to have been duly selected under said act of September 28, 1850, and shall be shown by legal investigation to be swamp or overflowed, or to belong to the State by said act, the Government will approve and certify other lands of like quantity in lieu thereof.

This adjustment, which I think is fair and just and should be satisfactory to the State, will, when approved by you, be a final settlement between the State of Iowa and the United States of all
191c claims under the Des Moines River grant, as well as of the act of 1841, except so far as valid and legally subsisting adverse rights may be found to exist to any of the tracts thus approved to the State.

The excess of the 500,000-acre grant (35,473.54 acres) thus deducted is by an agreement between the State and The Des Moines Valley Railroad Company (the beneficiary of the grant) to be credited to said company, at the rate of one dollar and twenty-five cents per acre in the satisfaction of claims against the State on account of the improvement of the Des Moines River. Said company should therefore be credited on the claims they are under obligation to satisfy with the sum of $44,341 67.

My authority extends only to settlement with the General Government. I have no power to carry out this agreement between the State and the company. It is but just, however, to say that this settlement has been made with the United States with the full understanding that this arrangement should be carried out.

The company, through its agents, has for a long time been laboring to this end. The opinion and decision of the Secretary of the Interior—a copy of which accompanying Mr. Kilbourne's report made last winter—is herewith transmitted for your examination in connection with this adjustment, is the result of their efforts.

The labors of these agents (Messrs. Kilbourne & Mason) heretofore in the premises, have greatly relieved me, and enabled me to close up the settlement thus early. It is due the company that this credit be given as soon as possible.

I hope, therefore, that this entire arrangement will meet with your approbation, and that you will, as I think you have the right and may safely do, fully consummate and carry it out by giving said company the benefit of said credit against said claims without delay.

Very respectfully submitted,

J. A. HARVEY,
Commissioner.

191d *Adjustment of the Iowa Des Moines River grant under the act of July 12th, 1862, and joint resolution of March 2d, 1861.*

DEBIT.

	Acres.
The State of Iowa with the quantity of indemnity lands selected under special certificate dated April 25, 1863	297,603.74
The lands in place to be certified	167,109.02
The lands in place confirmed by joint resolution of March 2d, 1861	44,838.64
The quantity selected on the East Fork of the Des Moines River and certified to the State under the original law of August 8th, 1846	11,661.80
The excess selected and approved to the State under the 500,000-acre grant of 1841	35,473.54
	556,686.74
Remaining indemnity due the State	1,317.32
	558,004.06

CREDIT.

The State of Iowa with the whole area of the grant above the Raccoon Fork..... 558,004.06

General Land Office, May 21, 1866.

J. M. EDMUNDS,
Commissioner General Land Office.

DEPARTMENT OF THE INTERIOR,
May 22, 1866.

The adjustment as herein stated is hereby approved.

JA'S HARLAN, *Secretary.*

THE STATE OF IOWA, *ss:*

The within adjustment, as stated, is hereby approved by us for the State of Iowa, June 20th, 1866.

W. M. STONE, *Governor,*
JAMES WRIGHT, *Sec'y State,*
JOHN A. ELLIOTT, *Auditor,*
W. H. HOLMES, *Treasurer,*
Census Board.

The item in the annexed adjustment of 35,473.54 acres being excess selections under the 500,000-acre grant to the State of Iowa, approved to said State February 20, 1851, includes 12,813.51 acres described as follows, viz:

191*e* Parts of sections.	Sec.	Tp.	Range.	Acres.
W. ½ of S. W. ¼	5	87	26	80.00
All of	7	87	26	597.92
N. ½ of	9	87	26	320.00
S. ½ of	15	87	26	320.00
All of	19	87	26	609.18
N. ½ of	21	87	26	320.00
W. ½ of	23	87	26	320.00
N. W. ¼	27	87	26	160.00
W. ½ of E. ½, and E. ½ of W. ½	29	87	26	320.00
All of	31	87	26	605.92
N. f'r ½ of N. W. ¼, and lots 1, 2, 3, and 4	1	86	27	241.56
S. ½ of	11	86	27	320.00
W. ½ of S. E. ¼, and S. W. ¼	1	87	27	240.00
N. E. ¼	7	87	27	160.00
N. ½ of	9	87	27	320.00
E. ½ of	11	87	27	320.00
All of	13	87	27	640.00
Lots 3 and 4	15	87	27	113.90
All of	19	87	27	618.40
N. E. ¼, and N. E. ¼ of N. W. ¼	23	87	27	200.00
Lots 4, 5, 6, 7, 8, and E. ½ of S. E. ¼	23	87	27	275.50
All of	25	87	27	604.25
W. ½ of	27	87	27	320.00
All of	29	87	27	640.00
All of	31	87	27	626.44
E. ½ of	33	87	27	320.00
W. ½ of N. E. ¼, S. E. ¼, and E. ½ N. W. ¼	31	88	27	320.00
S. E. ¼	3	87	28	160.00
N. E. ¼	11	87	28	160.00
E. ½ of S. E. ¼, N. W. ¼ of S. E. ¼, and lots 1, 2, and 3	5	88	28	252.44
W. f'r ½ of section, and N. E. ¼	7	88	28	468.00
E. ½ of section, and N. ½ of N. W. ¼	11	88	28	400.00
S. W. ¼	13	88	28	160.00
W. ½ of S. W. ¼	17	88	28	80.00
E. ½ of N. E. ¼	19	88	28	80.00
S. ½ of	21	88	28	320.00
E. ½ of	25	88	28	320.00
N. ½ of section, and S. E. ¼	33	88	28	480.00
Total				12,813.51

Subsequently to said approval, the above lands were deducted from the lists as improper selections because found in conflict with the river grant of 1846.

191*f* The above action of the Department, rejecting the above 12,813.51 acres from the original lists, was disapproved by the Secretary of the Interior, under date of February 28, 1865, hence, and in view of the annexed adjustment, covering the whole amount of excess selected and approved in 1851, the title to said above-described lands is affirmed as enuring to the State of Iowa from the 20th February, 1851.

GENERAL LAND OFFICE, *May* 28, 1866.

The above is respectfully submitted to the Hon. Secretary of the Interior for his approval.

J. M. EDMUNDS,
Commissioner.

DEPARTMENT OF THE INTERIOR,
May 29, 1866.

Approved.

JA'S HARLAN, *Secretary.*

Filed in State land office, August 2, 1866.

J. A. HARVEY, *Register.*

The General Government having retained 35,473.54 acres of the lands belonging to the Des Moines River grant, under act of July 12, 1862, in settlement for the same amount which was the excess selected under the 500,000-acre grant, the State census board has credited The

192 Des Moines Valley Railroad Company (the beneficiary of the Des Moines River grant) with the said amount of lands at $1 25 per acre, as follows:

Whereas David W. Kilbourne, appointed and commissioned by the governor of the State of Iowa to select the indemnity lands and to procure the certification of all the lands belonging to the Des Moines River grant, under the act of Congress approved July 12th, 1862, found it necessary, in order to procure the certification of the same to the State, to allow the United States Government to retain thirty-five thousand four hundred and seventy-three acres and fifty-four hundredths of an acre (35,473.54 acres) in settlement for the same number of acres, which were the excess selected and approved to the State under the five-hundred-thousand-acre grant of 1841 over and above the said five hundred thousand acres.

And whereas the said David W. Kilbourne did report to the governor that The Des Moines Valley Railroad Company, late the Keokuk, Fort Des Moines and Minnesota Railroad Company, which company is the beneficiary of said grant, subject to the payment of certain debts against said grant, and subject to other conditions, would consent that said lands should be so retained by the General Government on condition that said railroad company should be credited by the amount of lands so retained at one dollar and twenty-five cents per acre upon the claims due the State against said grant, as set forth in the ninth section of the act of the legislature, approved March 28, 1864, granting said lands to said company.

And whereas the said David W. Kilbourne did report to the gov-

ernor that the General Government required the consent of the State of Iowa, by some duly-authorized agent to the retention of said lands in settlement.

And whereas the legislature of the State did, by an act entitled "An act for the adjustment of certain land claims with the General Government, approved March 30th, A. D. 1866, authorize and empower J. A. Harvey to give such consent and make such settlement with the approval of the census board, and to procure the certification of the lands of said grant to the State.

And whereas said Harvey has given the assent of the State to
193 the retention by the General Government of the said lands in settlement, and has recommended that said credit be given to said railroad company on the said debts due to the State.

And whereas the said railroad company by Hugh T. Reid, its duly-authorized agent for that purpose, has assented to the retention of said lands for the purpose of said settlement; therefore the said settlement so made by said Harvey, with the credit so recommended by him to be made to said railroad company, is hereby approved, and in consideration of the consent given by said railroad company to the settlement of the said matter in manner aforesaid, and in consideration of said railroad company agreeing and consenting that said thirty-five thousand four hundred and seventy-three thirty-four hundredths acres of land contained in said grant of which said railroad company is the beneficiary, should be retained by the General Government for the purposes aforesaid, and for the purpose of carrying out the said agreement on the part of said State with said railroad company; therefore it is hereby further ordered that said railroad company be credited on said indebtedness and upon the claims which it is required to pay, and said railroad company is hereby credited on the said indebtedness with the sum and amount of said thirty-five thousand four hundred and seventy-three fifty-four hundredth' acres of land at the rate and sum of one dollar and twenty-five cents per acre, being forty-four thousand three hundred and forty-one eighty-two hundredth' dollars, to date from the 20th day of June, A. D. 1866.

[L. S.] In testimony whereof we, the census board of the said State, have hereunto affixed our hands and the seal of said State.

Done by said census board while in session.

W. M. STONE, *Governor*,
JAMES WRIGHT, *Sec'y State*,
JOHN A. ELLIOTT, *Auditor*,
W. H. HOLMES, *Treasurer*,
Census Board of the State of Iowa.

The following lists marked A, B, and C, exhibit all of the Des Moines River lands in place which have been approved and certified to the State of Iowa under the joint resolution of Congress of March 2, 1861, and contain in the aggregate 55,991.09 acres.

194 "A."—*A list of Des Moines River lands in place approved to the State, June* 14, 1866, *under joint resolution of March* 2*d*, 1861, *in Fort Des Moines district.*

Parts of section.	S.	T.	R.	Acres.
All of	19	81	24	642.08
S. W. h'f of S. W. q'r	21	81	24	40.00
All of	13	81	25	640.00
All of	15	81	25	640.00
All of	17	81	25	640.00
All of	19	81	25	676.38
E. h'f of	21	81	25	320.00
All of	23	81	25	640.00
All of	25	81	25	640.00
E. h'f N. E. and W. h'f *H.* W	27	81	25	160.00
S. h'f	27	81	25	320.00
Lots 5, 6, 7, 8, and N. h'f N. E	29	81	25	268.37
All of	31	81	25	675.62
All of	33	81	25	561.25
All of	3	80	26	701.92
N. h'f of sec. and S. E. q'r	5	80	26	538.78
N. E. S. W	5	80	26	40.00
N. h'f of sec. and S. E. q'r	9	80	26	480.00
E. h'f S. &	9	80	26	80.00
E. fr. h'f of sec. & E. fr. h'f N. W	25	81	26	385.42
S. W. q'r	25	81	26	160.00
All of	27	81	26	640.00
All of	29	81	26	640.00
N. E. q'r, N. E. N. W E. h'f S. E. and N. W. S. E	31	81	26	320.00
All of	33	81	26	640.00
All of	35	81	26	640.00
E. h'f N. E	25	81	27	80.00
Total				12,209.82

Filed in State land office, August 2, 1866.

"B."—*A list of Des Moines River lands in place approved to State, June* 14, 1866, *under joint resolution of March* 2*d*, 1861, *in Fort Dodge district.*

Parts of section.	S.	T.	R.	Acres.
All of	3	86	26	625.92
All of	5	86	26	624.86
All of	7	86	26	606.82
All of	9	86	26	640
N. h'f	15	87	26	320
All of	17	87	26	640
S. h'f	21	87	26	320
W. h'f of S. E	23	87	26	80
E. h'f of section and S. W. q'r	27	87	26	480
E. h'f of E. h'f and W. h'f of W. h'f	29	87	26	320
All of	33	87	26	640
All of	35	87	26	640
S. h f S. E., N. E. S. E., and lots 5, 6, 7, and 8	1	86	27	326.39
All of	3	86	27	574.46
N. fr. h'f of sec. and S. W. q'r	5	86	27	467.58
All of	7	86	27	629.60
All of	9	86	27	640
N. h'f	11	86	27	320
N. fr. h'f	15	86	27	390.65
N. h'f	17	86	27	320
E. h'f N. E. and S. W. N. W	15	87	27	120
Lots 1, 2, 5, 6, 7, and 8	15	87	27	272.80
W. h'f S. W	15	87	27	80
All of	17	87	27	611.25
All of	21	87	27	587.82
Lots 1, 2, 3, and S. W. S.W	23	87	27	121
E. h'f	27	87	27	320
W. h'f	33	87	27	320
All of	35	87	27	640
W. fr. h'f N. W	31	91	27	97
All of	1	86	28	627.88
N. fr. h'f sec., S. E. q'r, and N. E. S. W	3	86	28	503.02
All of	11	86	28	640
All of	13	86	28	640
All of	13	87	28	640
All of	15	87	28	640
All of	17	87	28	640
All of	21	87	28	640

"B."—*A list of Des Moines River lands in place*—Continued.

Parts of section.	S.	T.	R.	Acres.
All of	23	87	28	640
All of	25	87	28	640
All of	27	87	28	640
N. h'f N. E., S. E. N. E., and N. E. S. E	29	87	28	160
N. E. q'r, N. E. N. W., N. h'f S. E., and S. E. S. E	33	87	28	320
All of	35	87	28	640
W. fr. h'f sec., and W. fr. h'f of E. h'f	1	90	28	469. 75
All of	3	90	28	642. 18
All of	5	90	28	638. 94
N. h'f	11	90	28	320
All of	3	91	28	627. 42
All of	5	91	28	636. 08
Lots 1 and 2 (E. of river)	7	91	28	32
All of	9	91	28	640
All of	11	91	28	640
W. h'f N. E. and N. W. q'r	13	91	28	240
S. h'f	13	91	28	320
All of	15	91	28	640
All (E. of river)	17	91	28	626. 60
Lots 1, 2, 3, 4	19	91	28	188. 30
All of	21	91	28	640
All of	23	91	26	640
All of	25	91	28	640
All of	27	91	28	640
E. h'f sec., and lots 1, 2, 3, and 4	29	91	28	616. 25
Lot 1 (W. of river)	31	91	28	35. 70
All of	33	91	28	640
All of	35	91	28	640
S. E. q'r	27	92	28	160
Lot 1 (W. of river)	31	92	28	20. 90
Lots 3, 4, and S. h'f sec	33	92	28	427. 65
W. h'f N. W. and W. h'f S. W	35	92	28	160
Total				32, 628. 82

Filed in State land office, August 2, 1866.

195 "C."

GENERAL LAND OFFICE, *Oct.* 17, 1867.

I, Joseph S. Wilson, Commissioner of the General Land Office, do hereby certify that the annexed, on pages 1 to 2 inclusive, is a true and literal exemplification of the original approved list on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[L. S.]

JOS. S. WILSON,
Commissioner of the General Land Office.

List of lands selected by the State of Iowa, on the East Fork of Des Moines River, under the act of August 8, 1846, "for the improvement of the navigation of the Des Moines River," and confirmed by joint resolution of March 2, 1861.

Number.	Parts of section.	Section.	Township.	Range.	Acres.
	FORT DODGE DISTRICT.				
1	Fractional section	5	91	27	599.67
2	All of	7	91	27	668.54
3	All of	5	92	27	691.80
4	All of	7	92	27	658.24
5	All of	9	92	27	640
6	W. h'f N. W. q'r	15	92	27	80
7	All of	17	92	27	640
8	All of	19	92	27	665.92
9	Lots 1, 2, W. h'f of N. E. q'r	21	92	27	305.10
10	And N. W. q'r				
11	All of	29	92	27	639.84
12	All of	31	92	27	668.68
13	All of	1	91	28	635.52
14	E. h'f of N. E. q'r	13	91	28	80
15	All of	1	92	28	690.80
16	N. E. fr. q'r, N. fr. h'f of N. W. q'r	3	92	28	564.44
17	S. E. q'r of N. W. q'r, E. h'f of S. E. q'r				
18	N. W. q'r of S. E. q'r, and lots 1, 2, and 3				
19	N. h'f of section	11	92	28	440
20	E. h'f of S. E. q'r, and N. W. q'r of S. E. q'r				
21	All of	13	92	28	640
22	Lots No'. 1 and 2	15	92	28	18.70
23	All of	23	92	28	640
24	All of	25	92	28	640
25	Lot No 1	27	92	28	65.20
26	E. h'f of section, E. of N. W. q'r	35	92	28	480
27	And E. h'f of S. W. q'r				
	Total				11,152.45

GENERAL LAND OFFICE, *June* 18, 1867.

I, Jos. S. Wilson, Commissioner of the General Land Office, do hereby certify that the foregoing, on page one, is a true and correct list of the lands confirmed to the State of Iowa, by joint resolution of March
196 2, 1861, in connection with the act of 8th of August, 1846, for the improvement of the navigation of the Des Moines River, being the alternate odd-numbered sections of land formerly selected by the State, on the East Fork of the Des Moines River, and making the quantity charged to the State in the final adjustment of May 21, 1866, (excepting five hundred and nine acres and thirty-five one-hundredths of an acre, for interfering entries.) They are now submitted for the approval of the Secretary of the Interior, subject, however, to any valid interfering rights which may have existed at the date of said joint resolution of March 2, 1861.

In testimony whereof I have hereunto subscribed my name and caused the seal of the General Land Office to be affixed, at the city of Washington, on the day and year first hereinabove written.

[L. S.] JOS. S. WILSON, *Commissioner.*

DEPARTMENT OF THE INTERIOR,
Washington City, July 8, 1867.

Approved, subject to the conditions and rights above mentioned.

W. T. OTTO, *Acting Secretary.*

Filed in the State land office October 23, 1867.

C. C. CARPENTER, *Register.*

A table exhibiting the lands approved to the State of Iowa under the construction given to the act of Congress of August 8th, 1846, previous to the decision of the Supreme Court of the United States, in the case of The Dubuque & Pacific Railroad Company vs. Litchfield, together with such parts of said lands as have been subsequently certified to the State as railroad lands, and which are not included in the lists of lands approved and certified to State under joint resolution of Congress of March 2, 1861; also, showing the railroad limits within which these lands lay.

CERTIFIED UNDER DES MOINES GRANT.					CERTIFIED AS RAILROAD LANDS.		RAILROAD LIMITS.
Parts of sections.	S.	T.	R.	Acres.	Parts of sections.	Acres.	
S. W. S. W	5	79	23	40			Mississippi & Missouri River Railroad.
All	7	79	23	669.44	All	669.44	" " "
S. W. N. E., N. W., N. h'f S. W., N. W. S. E	17	79	23	320	N. W., N. h'f S. W., S. W. N. E., N. W. S. E	320	" " "
N. W. N. E., N. h'f N. W	21	79	23	120			" " "
W. h'f N. W., W. h'f S. W., S. E. S. W	31	80	23	232	W. h'f N. W., W. h'f S. W., S. E. S. W	232	" " "
Lot 6	9	78	24	43.75	Lot 6	43.75	" " "
S. h'f and fr. on left bank	17	78	24	320.47	S. h'f, lot 1, fr. on left bank	320.47	" " "
All	19	78	24	653.12	All	653.12	" " "
N. W. N. W	21	78	24	40	N. W. N. W	40	" " "
N. W. N. E., N. W., W. h'f S. W., N. E. S. W	29	78	24	320	N. W., N. W. N. E., N. h'f S. W., S. W. S. W	320	" " "
N. E., E. h'f N. W., N. W. N. W., N. h'f S. E	31	78	24	363.08	N. E., E. h'f N. W., N. W. N. W., N. h'f S. E	363.08	" " "
E. h'f, N. h'f N. W., S. h'f S. W	1	79	24	508.62	N. E., N. h'f N. W., S. h'f S. W., S. E	508.62	" " "
S. W. N. W	3	79	24	40	S. W. N. W	40	" " "
W. h'f S. W., lots 5, 6, 7	5	79	24	188.45	N. W. S. W., lots 5, 6, 7	148.45	" " "
N. h'f N. E., S. W. N. E., S. h'f S. E., W. h'f	7	79	24	523.42	All	523.42	" " "
W. h'f N. E., W. h'f S. E., W. h'f S. W., S. E. S. W	11	79	24	280	W. h'f N. E., W. h'f S. E., W. h'f S. W., S. E. S. W	280	" " "
E. h'f S. W., E. h'f N. W	13	79	24	560	N. E., E. h'f N. W., S. h'f	560	" " "
All	15	79	24	640	All	640	" " "
W. h'f S. W., S. E. S. W., lots 7, 8, 9	17	79	24	208.25	W. h'f S. W., S. E. S. W., lots 7, 8, 9	208.25	" " "
All	19	79	24	646.74	All	646.74	" " "
W. h'f S. W., S. W. N. W., lot 3	21	79	24	140.30	S. W. N. W., W. h'f S. W., lot 3	140.30	" " "
All	23	79	24	640	All	640	" " "
N. W., W. h'f S. W	25	79	24	240	N. W., W. h'f S. W	240	" " "
N. h'f N. E., N. h'f N. W	29	79	24	160	N. h'f N. E., N. h'f N. W	160	" " "
N. W	31	79	24	169.96	N. W	169.96	" " "
All	3	80	24	708.23	All	708.23	" " "
S. h'f S. W	7	80	24	86.61	S. h'f S. W	86.61	" " "
All	9	80	24	640	All	640	" " "
All	11	80	24	640	All	640	" " "
S. W. N. E., W. h'f S. E	13	80	24	440	W. h'f, W. h'f S. E., S. W. N. E	440	" " "
N. h'f S. E. q'r	15	80	24	480	N. h'f, S. E	480	" " "
198 N. E	17	80	24	160	N. E	160	" " "
E. h'f N. E	19	80	24	80	E. h'f N. E	80	" " "
All	23	80	24	640	All	640	" " "
All	25	80	24	640	All	640	" " "

Table "D"—Continued.

CERTIFIED UNDER DES MOINES GRANT.					CERTIFIED AS RAILROAD LANDS.		RAILROAD LIMITS.
Parts of sections.	S.	T.	R.	Acres.	Parts of sections.	Acres.	
N. E. N. E., N. h'f N. W., S. h'f S. W., S. E	27	80	24	360	N. E. N. E., S. h'f S. W., S. E. q'r	280	Mississippi & Missouri River Railroad.
E. h'f S. E., S. W. S. E., lot 1	29	80	24	129.41	E. h'f S. E., S. W. S. E., lot 1	129.41	" " "
W. h'f N. W., N. E. N. W., S. W., lots 2, 3, 4, 5, 6	31	80	24	527.43	All	527.43	" " "
N. W., W. h'f S. E	33	80	24	240	N. W., W. h'f S. E	240	" " "
E. h'f N. E	35	80	24	80	E. h'f N. E.	80	" " "
W. h'f S. W., S. E. S. W	7	81	24	127.32	W. h'f S. W., S. E. S. W	127.32	" " "
All	19	81	24	642.08			" " "
S. W. S. W	21	81	24	40			" " "
W. h'f S. W	27	81	24	80	W. h'f S. W	80	" " "
All	29	81	24	640	All	640	" " "
S. E	31	81	24	160	S. E	160	" " "
All	33	81	24	640	All	640	" " "
All but N. E. N. E.	1	78	25	643.65	W. h'f N. E., S. E. N. E., N. W., S. h'f	643.65	" " "
All	3	78	25	617.12	E. h'f, N. W., E. h'f S. W	617.12	" " "
E. h'f N. E., S. W. N. E., N. W. N. W., S. E. N. W	11	78	25	200	E. h'f N. E., S. W. N. E., S. E. N. W	160	" " "
E. h'f S. E., lots 6, 7, 8	13	78	25	231.55	E. h'f S. E. q'r, lots 6, 7, 8	231.55	" " "
E. h'f S. E	23	78	25	80	E. h'f S. E	80	" " "
N. W. N. E., N. h'f N. W., N. E. S. W., E. h'f S. E., N. W. S. E.	25	78	25	280	N. E., E. h'f N. W., N. W. N. W., E. h'f S. E., N. W. S. E., N. E. S. W.	440	" " "
N. h'f	1	79	25	364.80	N. h'f	364.80	" " "
All	3	79	25	681.70	All	681.70	" " "
N. h'f N. E	5	79	25	99.91	N. h'f N. E	99.91	" " "
E. h'f N. W., N. W. N. W., E. h'f S. W., E. h'f	9	79	25	520	E. h'f, E. h'f N. W., N. W., E. h'f S. W	520	" " "
All	11	79	25	640	All	640	" " "
N. E. N. E., E. h'f S. W	13	79	25	120	N. E. N. E., E. h'f S. W	120	" " "
All	15	79	25	640	All	640	" " "
E. h'f N. E., E. h'f S. E	21	79	25	160	E. h'f N. E., E. h'f S. W	160	" " "
W. h'f N. E., S. E. N. E., W. h'f S. E	23	79	25	600	S. h'f., S. h'f N. E., N. W. N. E., N. W	600	" " "
All	25	79	25	640	All	640	" " "
All but S. W. S. W	27	79	25	600	N. h'f, N. h'f S. W., S. E. S. W., S. E	600	" " "
W. h'f N. E., W. h'f S. E., W. h'f	35	79	25	480	W. h'f, W. h'f N. E., W. h'f S. E	480	" " "
S. h'f N. E	1	80	25	80	S. h'f N. E	80	" " "
S. h'f N. E., E. h'f S. E., lots 1, 2, 3, 4, 5, 6, 7	3	80	25	497.21	S. h'f N. E., E. h'f S. E., lots 1, 2, 3, 4, 5, 6, 7	497.21	" " "
All	5	80	25	689.74	All	689.74	" " "
All	7	80	25	652	All	652	" " "
All	9	80	25	640	All	649	" " "
Lots 1, 2, 3, 4, 5, 6, 7	11	80	25	239.63	Lots 1, 2, 3, 4, 5, 6, 7	239.63	" " "
Lots 3, 4, 7, 8	13	80	25	180.18	Lots 3, 4, 7, 8	180.18	" " "
All	15	80	25	640	All	640	" " "
199 All	17	80	25	640.00	All	640.00	" " "
All	19	80	25	653.04	All	653.04	" " "
All	21	80	25	640.00	All	640.00	" " "

All	23	80	25	640.00	All	640.00	"	"
All	25	80	25	640.00	All	640.00	"	"
All	27	80	25	640.00	All	640.00	"	"
N. E. q'r, W. h'f, S. W. S. E	29	80	25	520.00	W. h'f, N. E., S. W. S. E	520.00	"	"
N. E. q'r, E. h'f N. W., N. E. S. E	31	80	25	280.00	N. E., E. h'f N. W., N. E. S. E	280.00	"	"
All	33	80	25	640.00	All	640.00	"	"
All	35	80	25	640.00	All	640.00	"	"
All	3	81	25	616.55	All	616.55	Iowa Central Air-line Railroad.	
All	5	81	25	617.84	All	617.84	"	"
All	7	81	25	674.16	All	674.16	"	"
All	9	81	25	640.00	All	640.00	"	"
All	11	81	25	640.00	All	640.00	"	"
All	13	81	25	640.00			"	"
All	15	81	25	640.00			"	"
All	17	81	25	640.00			"	"
E. h'f, E. h'f N. W., N. W. N. W., E. h'f S. W	19	81	25	529.17			"	"
E. h'f	21	81	25	320.00			"	"
All	23	81	25	640.00			"	"
All	25	81	25	640.00			"	"
E. h'f N. E., W. h'f N. W	27	81	25	160.00			"	"
N. h'f N. E., lots 5, 6, 7, 8	29	81	25	268.37			"	"
All	31	81	25	675.62			"	"
S. W. S. W., lots 2, 3, 4, 5, 6	33	81	25	251.91			"	"
	35	81	25				"	"
All	5	82	25	635.18	All	635.18	"	"
All	7	82	25	658.86	All	658.86	"	"
W. h'f N. W., W. h'f S. W., S. E. S. W	9	82	25	200.00	W. h'f N. W., W. h'f S. W., S. E. S. W	200.00	"	"
All	17	82	25	640.00	All	640.00	"	"
W. h'f, W. h'f N. E., S. E. N. E., W. h'f S. E., N. E. S. E.	21	82	25	560.00	W. h'f N. E., S. E. N. E., W. h'f S. E., N. E. S. E	560.00	"	"
S. W. N. W., W. h'f S. W	27	82	25	120.00	W. h'f S. W., S. W. N. W	120.00	"	"
All	29	82	25	640.00	All	640.00	"	"
All	31	82	25	663.10	All	663.10	"	"
All	33	82	25	640.00	All	640.00	"	"
200 W. h'f, W. h'f N. E., W. h'f S. E	7	83	25	467.98	W. h'f, W. h'f N. E., W. h'f S. E	467.98	"	"
All	19	83	25	653.08	All	653.08	"	"
W. h'f N. W., S. W. q'r	29	83	25	240	W. h'f N. W., S. W	240	"	"
All	31	83	25	665.52	All	665.52	"	"
All	1	80	26	698.18	All	698.18	Mississippi & Missouri River Railroad.	
All	3	80	26	701.92			"	"
E. h'f, N. W., N. E. S. W	5	80	26	578.78			"	"
E. h'f, N. W., E. h'f S. W	9	80	26	560			"	"
All	11	80	26	640	All	640	"	"
All	13	80	26	640	All	640	"	"
N. h'f, N. E. S. E	15	80	26	400	N. h'f, N. h'f S. E	400	"	"
N. E. N. E	23	80	26	40	N. E. N. E	40	"	"
N. E., N. E. N. W., E. h'f S. E	25	80	26	280	N. E., N. E. N. W., E. h'f S. E	280	"	"
S. E	1	81	26	160	S. E	160	Iowa Central Air-line Railroad.	
All but S. h'f S. W	3	81	26	500.56	E. h'f, N. W., N. h'f S. W	500.56	"	"
All	5	81	26	595.26	All	595.26	"	"
All	7	81	26	612.08	All	612.08	"	"
All	9	81	26	640	All	640	"	"

Table "D"—Continued.

CERTIFIED UNDER DES MOINES GRANT.					CERTIFIED AS RAILROAD LANDS.		RAILROAD LIMITS.
Parts of sections.	S.	T.	R.	Acres.	Parts of sections.	Acres.	
N. E. N. E., N. h'f N. W., S. h'f S. W., S. E.	27	80	24	360	N. E. N. E., S. h'f S. W., S. E. q'r.	280	Mississippi & Missouri River Railroad.
E. h'f S. E., S. W. S. E., lot 1	29	80	24	129.41	E. h'f S. E., S. W. S. E., lot 1	129.41	" " "
W. h'f N. W., N. E. N. W., S. W., lots 2, 3, 4, 5, 6	31	80	24	527.43	All	527.43	" " "
N. W., W. h'f S. E	33	80	24	240	N. W., W. h'f S. E	240	" " "
E. h'f N. E	35	80	24	80	E. h'f N. E.	80	" " "
W. h'f S. W., S. E. S. W	7	81	24	127.32	W. h'f S. W., S. E. S. W	127.32	" " "
All	19	81	24	642.08			" " "
S. W. S. W	21	81	24	40			" " "
W. h'f S. W	27	81	24	80	W. h'f S. W	80	" " "
All	29	81	24	640	All	640	" " "
S. E	31	81	24	160	S. E	160	" " "
All	33	81	24	640	All	640	" " "
All but N. E. N. E.	1	78	25	643.65	W. h'f N. E., S. E. N. E., N. W., S. h'f	643.65	" " "
All	3	78	25	617.12	E. h'f, N. W., E. h'f S. W	617.12	" " "
E. h'f N. E., S. W. N. E., N. W. N. W., S. E. N. W	11	78	25	200	E. h'f N. E., S. W. N. E., S. E. N. W	160	" " "
E. h'f S. E., lots 6, 7, 8	13	78	25	231.55	E. h'f S. E. q'r, lots 6, 7, 8	231.55	" " "
E. h'f S. E	23	78	25	80	E. h'f S. E	80	" " "
N. W. N. E., N. h'f N. W., N. E. S. W., E. h'f S. E., N. W. S. E.	25	78	25	280	N. E., E. h'f N. W., N. W. N. W., E. h'f S. E., N. W. S. E., N. E. S. W.	440	" " "
N. h'f	1	79	25	364.80	N. h'f	364.80	" " "
All	3	79	25	681.70	All	681.70	" " "
N. h'f N. E	5	79	25	99.91	N. h'f N. E	99.91	" " "
E. h'f N. W., N. W. N. W., E. h'f S. W., E. h'f	9	79	25	520	E. h'f, E. h'f N. W., N. W., E. h'f S. W	520	" " "
All	11	79	25	640	All	640	" " "
N. E. N. E., E. h'f S. W	13	79	25	120	N. E. N. E., E. h'f S. W	120	" " "
All	15	79	25	640	All	640	" " "
E. h'f N. E., E. h'f S. E	21	79	25	160	E. h'f N. E., E. h'f S. W	160	" " "
W. h'f N. E., S. E. N. E., W. h'f S. E	23	79	25	600	S. h'f., S. h'f N. E., N. W. N. E., N. W	600	" " "
All	25	79	25	640	All	640	" " "
All but S. W. S. W	27	79	25	600	N. h'f, N. h'f S. W., S. E. S. W., S. E	600	" " "
W. h'f N. E., W. h'f S. E., W. h'f	35	79	25	480	W. h'f, W. h'f N. E., W. h'f S. E	480	" " "
S. h'f N. E	1	80	25	80	S. h'f N. E	80	" " "
S. h'f N. E., E. h'f S. E., lots 1, 2, 3, 4, 5, 6, 7	3	80	25	497.21	S. h'f N. E., E. h'f S. E., lots 1, 2, 3, 4, 5, 6, 7	497.21	" " "
All	5	80	25	689.74	All	689.74	" " "
All	7	80	25	652	All	652	" " "
All	9	80	25	640	All	640	" " "
Lots 1, 2, 3, 4, 5, 6, 7	11	80	25	239.63	Lots 1, 2, 3, 4, 5, 6, 7	239.63	" " "
Lots 3, 4, 7, 8	13	80	25	180.18	Lots 3, 4, 7, 8	180.18	" " "
All	15	80	25	640	All	640	" " "
199 All	17	80	25	640.00	All	640.00	" " "
All	19	80	25	653.04	All	653.04	" " "
All	21	80	25	640.00	All	640.00	" " "

All	23	80	25	640.00	All	640.00	"	"	"
All	25	80	25	640.00	All	640.00	"	"	"
All	27	80	25	640.00	All	640.00	"	"	"
N. E. q'r, W. h'f, S. W. S. E	29	80	25	520.00	W. h'f, N. E., S. W. S. E	520.00	"	"	"
N. E. q'r, E. h'f N. W., N. E. S. E	31	80	25	280.00	N. E., E. h'f N. W., N. E. S. E	280.00	"	"	"
All	33	80	25	640.00	All	640.00	"	"	"
All	35	80	25	640.00	All	640.00	"	"	"
All	3	81	25	616.55	All	616.55	Iowa Central Air-line Railroad.		
All	5	81	25	617.84	All	617.84	"	"	"
All	7	81	25	674.16	All	674.16	"	"	"
All	9	81	25	640.00	All	640.00	"	"	"
All	11	81	25	640.00	All	640.00	"	"	"
All	13	81	25	640.00			"	"	"
All	15	81	25	640.00			"	"	"
All	17	81	25	640.00			"	"	"
E. h'f, E. h'f N. W., N. W. N. W., E. h'f S. W	19	81	25	529.17			"	"	"
E. h'f	21	81	25	320.00			"	"	"
All	23	81	25	640.00			"	"	"
All	25	81	25	640.00			"	"	"
E. h'f N. E., W. h'f N. W	27	81	25	160.00			"	"	"
N. h'f N. E., lots 5, 6, 7, 8	29	81	25	268.37			"	"	"
All	31	81	25	675.62			"	"	"
S. W. S. W., lots 2, 3, 4, 5, 6	33	81	25	251.91			"	"	"
	35	81	25				"	"	"
All	5	82	25	635.18	All	635.18	"	"	"
All	7	82	25	658.86	All	658.86	"	"	"
W. h'f N. W., W. h'f S. W., S. E. S. W	9	82	25	200.00	W. h'f N. W., W. h'f S. W., S. E. S. W	200.00	"	"	"
All	17	82	25	640.00	All	640.00	"	"	"
W. h'f, W. h'f N. E., S. E. N. E., W. h'f S. E., N. E. S. E.	21	82	25	560.00	W. h'f N. E., S. E. N. E., W. h'f S. E., N. E. S. E	560.00	"	"	"
S. W. N. W., W. h'f S. W	27	82	25	120.00	W. h'f S. W., S. W. N. W	120.00	"	"	"
All	29	82	25	640.00	All	640.00	"	"	"
All	31	82	25	663.10	All	663.10	"	"	"
All	33	82	25	640.00	All	640.00	"	"	"
200 W. h'f, W. h'f N. E., W. h'f S. E	7	83	25	467.98	W. h'f, W. h'f N. E., W. h'f S. E	467.98	"	"	"
All	19	83	25	653.08	All	653.08	"	"	"
W. h'f N. W., S. W. q'r	29	83	25	240	W. h'f N. W., S. W	240	"	"	"
All	31	83	25	665.52	All	665.52	"	"	"
All	1	80	26	698.18	All	698.18	Mississippi & Missouri River Railroad.		
All	3	80	26	701.92			"	"	"
E. h'f, N. W., N. E. S. W	5	80	26	578.78			"	"	"
E. h'f, N. W., E. h'f S. W	9	80	26	560			"	"	"
All	11	80	26	640	All	640	"	"	"
All	13	80	26	640	All	640	"	"	"
N. h'f, N. E. S. E	15	80	26	400	N. h'f, N. h'f S. E	400	"	"	"
N. E. N. E	23	80	26	40	N. E. N. E	40	"	"	"
N. E., N. E. N. W., E. h'f S. E	25	80	26	280	N. E., N. E. N. W., E. h'f S. E	280	"	"	"
S. E	1	81	26	160	S. E	160	Iowa Central Air-line Railroad.		
All but S. h'f S. W	3	81	26	500.56	E. h'f, N. W., N. h'f S. W	500.56	"	"	"
All	5	81	26	595.26	All	595.26	"	"	"
All	7	81	26	612.08	All	612.08	"	"	"
All	9	81	26	640	All	640	"	"	"

Table "D" Continued.

CERTIFIED UNDER DES MOINES GRANT.					CERTIFIED AS RAILROAD LANDS.		RAILROAD LIMITS.
Parts of sections.	S.	T.	R.	Acres.	Parts of sections.	Acres.	
S. W. S. W., lots 5, 6, 7, 8, 9	11	81	26	302. 04	S. W. S. W., lots 5, 6, 7, 8, 9	302. 04	Iowa Central Air-line Railroad.
N. h'f, E. h'f S. E., lot 1	13	81	26	409. 35	N. E. N. W., E. h'f S. E., lot 1	409. 35	" " "
All	15	81	26	640	All	640	" " "
All	17	81	26	640	All	640	" " "
All	19	81	26	612	All	612	" " "
All	21	81	26	640	All	640	" " "
N. h'f, S. E	23	81	26	480	E. h'f, N. W	480	" " "
S h'f, N. E. N. W., lots 1, 2, 3, 4	25	81	26	545. 42			" " "
All	27	81	26	640			" " "
All	29	81	26	640			" " "
N. E., N. E. N. W., E. h'f S. E., N. W. S. E	31	81	26	320			" " "
All	33	81	26	640			" " "
All	35	81	26	640			" " "
N. h'f N. E., E. h'f S. E., S. W. S. E., W. h'f S. W., S. E. S. W.	1	82	26	317. 96	N. h'f N. E., E. h'f S. E., S. W. S. E., W. h'f S. W. S. E. S. W.	317. 96	" " "
All	3	82	26	648	All	648	" " "
N W. N. E., W. h f N. W., N. E. N. W., W. h'f S. W., S. E. S. W., lots 4, 5, 6, 7, 8.	5	82	26	448. 90	N. W. N. E., N. h'f N. W., S. W. N. W., W. h'f S. W., S. E. S W., lots 4, 5, 6, 7, 8.	448. 90	" " "
All	7	82	26	608	All	608	" " "
All	9	82	26	598. 46	All	598. 46	" " "
E. h'f, N. W	11	82	26	480	E. h'f, N. W	480	" " "
All	13	82	26	640	All	640	" " "
All	15	82	26	497. 58	All	597. 58	" " "
All	17	82	26	640	All	640	" " "
All	19	82	26	613. 24	All	613. 24	" " "
201 All	21	82	26	640	All	640	" " "
E. h'f, N. W	23	82	26	480	E. h'f, N. W	480	" " "
All but S. W. S. W., lot 8, 9	27	82	26	480. 36	W. h'f N. W., N. E. N. W., E. h'f S. E., lots 1, 2, 3, 4, 5, 6, 7,	440	" " "
All	29	82	26	640	All	640	" " "
All	31	83	26	621. 60	All	621. 60	" " "
All	33	82	26	640	All	640	" " "
S. h'f	35	82	26	320	S. h'f	320	" " "
All	1	83	26	521. 60	All	521. 60	" " "
W. h'f, N. E., W. h'f	3	83	26	314. 86	W. h'f, W. h'f N. E	314. 86	" " "
E. h'f N. E., S. h'f	5	83	26	373	S. h'f, E. h'f N. E	373	" " "
Lot 2	7	83	26	43. 15	Lot 2	43. 15	" " "
All	9	83	26	640	All	640	" " "
E. h'f, E. h'f N. W., N. W. N. W., S. h'f S. W	11	83	26	520	E. h'f, E. h'f N. W., N. W. N. W., S. h'f S. W	520	" " "
All	13	83	26	640	All	640	" " "
W. h'f S. W., N. W	15	83	26	240	N. W., W. h'f S. W	240	" " "
N. E., N. h'f N. W., lots 1, 2, 3, 4, 6, 7, 8	17	83	26	513. 50	N. E., N. h'f N. W., lots 1, 2, 3, 4, 6, 7, 8	513. 50	" " "

All	19	83	26	616.98	All	616.98	" " "
All	21	83	26	631.32	All	631.32	" " "
All	23	83	26	640	All	640	" " "
All	25	83	26	640	All	640	" " "
All	27	83	26	640	All	640	" " "
All	29	83	26	592.36	All	592.36	" " "
All	31	83	26	620	All	620	" " "
All	33	83	26	574.92	All	574.92	" " "
W. h'f, N. E., N. h'f S. E	35	83	26	560	W. h'f, N. E., N. h'f S. E	560	" " "
S. W. S. W	31	84	25	42.48	S. W. S. W	42.48	" " "
All	3	84	26	713.70	All	713.70	" " "
All	5	84	26	718.52	All	718.52	" " "
All	7	84	26	603.01	All	603.01	" " "
All	9	84	26	640	All	640	" " "
All	11	84	26	640	All	640	" " "
All	5	84	26	640	All	640	" " "
All	17	84	26	340	All	640	" " "
All	19	84	26	624.50	All	624.50	" " "
All	21	84	26	640	All	640	" " "
W. h'f, W. h'f N. E., N. E. N. E., W. h'f S. E	23	84	26	520	W. h'f, W. h'f N. E. q'r, N. E. N. E., W. h'f S. E	520	" " "
202 W. h'f S. W.	25	84	26	80	W. h'f S. W	80	" " "
All	27	84	26	640	All	640	" " "
All	29	84	26	640	All	640	" " "
All	31	84	26	599.76	All	599.76	" " "
All	33	84	26	640	All	640	" " "
All	35	84	26	640	All	640	" " "
S. h'f N. W., N. W. N. W., S. W. q'r	3	85	26	277.28	W. h'f N. W., S. E. N. W., S. W	277.28	" " "
All	5	85	26	629.54	All	629.54	" " "
All	7	85	26	611.98	All	611.98	" " "
All	9	85	26	640	All	640	" " "
S. W. N. E., W. h'f, W. h'f S. E., S. E. S. E	15	85	26	480	W. h'f, W. h'f S. E. q'r, S. E. S. E., S. W. N. E. q'r	480	" " "
All	17	85	26	640	All	640	" " "
All	19	85	26	616.30	All	616.30	" " "
All	21	85	26	640	All	640	" " "
W. h'f N. W., S. W. q'r	23	85	26	240	W. h'f N. W., S. W	240	" " "
All	27	85	26	640	All	640	" " "
All	29	85	26	640	All	640	" " "
All	31	85	26	618.16	All	618.16	" " "
All	33	85	26	640	All	640	" " "
W. h'f N. E., W. h'f, W. h'f S. E	35	85	26	480	W. h'f, W. h'f N. E., W. h'f, W. h'f S. E	480	Dubuque & Sioux City Railroad.
All	3	86	26	625.92			" " "
All	5	86	26	624.86			" " "
All	7	86	26	606.82			" " "
All	9	86	26	640			" " "
W. h'f N. E., N. E. N. E., W. h'f, W. h'f S. E	11	86	26	520	W. h'f N. E., N. E. N. E., W. h'f S. E	520	Iowa Central Air-line Railroad.
All	15	85	26	640	All	640	" " "
All	17	86	26	640	All	640	" " "
All	19	86	26	607.76	All	607.76	" " "
All	21	86	26	640	All	640	" " "
All	29	86	26	640	All	640	" " "
All	31	86	26	607.84	All	607.84	" " "
All	33	86	26	640	All	640	" " "

Table "D"—Continued.

CERTIFIED UNDER DES MOINES GRANT.					CERTIFIED AS RAILROAD LANDS.		RAILROAD LIMITS.
Parts of sections.	S.	T.	R.	Acres.	Parts of sections.	Acres.	
All except W. h'f S. W.	5	87	26	583.98	All except W. h'f S. W.	583.98	Dubuque & Sioux City Railroad.
S. h'f.	9	87	26	320	S. h'f.	320	" " "
N. h'f.	15	87	26	320			" " "
All	17	87	26	640			" " "
S. h'f.	21	87	26	320			" " "
W. h'f S. E.	23	87	26	80			" " "
E. h'f and S. W. q'r.	27	87	26	480			" " "
E. h'f N. E., W. h'f N. W., W. h'f S. W., E. h'f S. E.	29	87	26	320			" " "
All	33	87	26	640			" " "
All	35	87	26	640			" " "
203 S. W. S. W.	29	8	26	40	S. W. S. W.	40	" " "
All	31	88	26	580.68	All	580.68	" " "
All	1	81	27	593.64	All	593.64	Iowa Central Air-line Railroad.
N. E. q'r, E. h'f S. E.	11	81	27	240	N. E. q'r and E. h'f S. E.	240	" " "
N. h'f, S. E. q'r, E. h'f S. W.	13	81	27	560	N. h'f, S. E., E. h'f S. W.	560	" " "
E. h'f N. E.	25	81	27	80			" " "
All	1	82	27	633.66	All	633.66	" " "
All	3	82	27	639.68	All	639.68	" " "
N. E. q'r, E. h'f S. E.	9	82	27	240	N. E. q'r, E. h'f S. E.	240	" " "
All	11	82	27	640	All	640	" " "
All	13	82	27	640	All	640	" " "
All	15	82	27	640	All	640	" " "
All	23	82	27	640	All	640	" " "
All	25	82	27	640	All	640	" " "
N. E. N. E.	27	82	27	40	N. E. N. E.	40	" " "
E. h'f, E. h'f N. W., E. h'f S. W.	35	82	27	480	E. h'f, E. h'f N. W., E. h'f S. W.	480	" " "
All	1	83	27	481.07	All	481.07	" " "
All	3	83	27	528.04	All	528.04	" " "
All	5	83	27	525.24	All	525.24	" " "
All	7	83	27	646.08	All	646.08	" " "
All	9	83	27	640	All	640	" " "
All	11	83	27	640	All	640	" " "
All	13	83	27	640	All	640	" " "
All	15	83	27	640	All	640	" " "
All	17	83	27	640	All	640	" " "
All	21	83	27	640	All	640	" " "
All	23	83	27	640	All	640	" " "
All	25	83	27	640	All	640	" " "
All	27	83	27	640	All	640	" " "
E. h'f.	33	83	27	320	E. h'f.	320	" " "
All	35	83	27	640	All	640	" " "

All		1	84	27	657.85	All	657.85	"	"
All		3	84	27	710.78	All	710.78	"	"
All		5	84	27	706.24	All	706.24	"	"
All		7	84	27	643.84	All	643.84	"	"
	All	9	84	27	640	All	640	"	"
204	All	11	84	27	640.00	All	640.00	"	"
	All	13	84	27	585.56	All	585.55	"	"
All		15	84	27	640.00	All	640.00	"	"
All		17	84	27	640.00	All	640.00	"	"
All		19	84	27	643.84	All	643.84	"	"
All		21	84	27	640.00	All	640.00	"	"
All		23	84	27	579.25	All	579.25	"	"
All		25	84	27	629.74	All	620.74	"	"
All		27	84	27	635.53	All	635.53	"	"
All		29	84	27	640.00	All	640.00	"	"
All		31	84	27	645.20	All	645.20	"	"
All		33	84	27	640.00	All	640.00	"	"
All		35	84	27	599.22	All	599.22	"	"
All		1	85	27	627.53	All	627.58	"	"
All		3	85	27	582.14	All	582.14	"	"
All		5	85	27	643.58	All	643.58	"	"
All		7	85	27	638.60	All	638.60	"	"
All		9	85	27	640.00	All	640.00	"	"
All		11	85	27	590.64	All	590.64	"	"
All		13	85	27	640.00	All	640.00	"	"
All		15	85	27	605.51	All	605.51	"	"
All		17	85	27	640.00	All	640.00	"	"
All		19	85	27	644.80	All	644.80	"	"
All		21	85	27	640.00	All	640.00	"	"
All		23	85	27	617.57	All	617.57	"	"
All		25	85	27	640.00	All	640.00	"	"
All		27	85	27	597.60	All	597.60	"	"
All		29	85	27	640.00	All	640.00	"	"
All		31	85	27	645.40	All	645.40	"	"
All		33	85	27	640.00	All	640.00	"	"
All		35	85	27	621.60	All	621.06	"	"
S. h'f S. E., S. W. S. E., lots 5, 6, 7, 8		1	86	27	326.39			"	"
All		3	86	27	574.46			"	"
All		5	86	27	627.58			"	"
All		7	86	27	629.60			"	"
All		9	86	27	640.00			"	"
N. h'f		11	86	27	320.00			"	"
All		13	86	27	640.00	All	640.00	"	"
All		15	86	27	630.65			"	"
All		17	86	27	640.00			"	"
All		19	86	27	632.60	All	632.60	"	"
	All	21	86	27	596.88	All	596.88	"	"
205	All	23	86	27	640.00	All	640	"	"
	All	25	86	27	640.00	All	640	"	"
All		27	86	27	591.16	All	591.16	"	"
All		29	86	27	640.00	All	640	"	"
All		31	86	27	634.72	All	634.72	"	"

Table "D"—Continued.

CERTIFIED UNDER DES MOINES GRANT.					CERTIFIED AS RAILROAD LANDS.		RAILROAD LIMITS.
Parts of sections.	S.	T.	R.	Acres.	Parts of sections.	Acres.	
All	33	86	27	640.00	All	640	Iowa Central Air-line Railroad.
All	35	86	27	640.00	All	640	" " "
N. h'f, E. h'f S. E.	1	87	27	426.44	N. h'f, E. h'f S. E. q'r	426.44	Dubuque & Sioux City Railroad.
All	3	87	27	673.90	All	673.90	" " "
All	5	87	27	681.60	All	681.60	" " "
W. h'f and S. E. q'r	7	87	27	444.30	W. h'f, S. E. q'r	444.30	" " "
S. h'f	9	87	27	320.00	S. h'f	320	" " "
W. h'f	11	87	27	320.00	W. h'f	320	" " "
Lots 1, 2, 5, 6, 7, 8, E. h'f N. E., S. W. N. W., W. h'f S. W.	15	87	27	472.80			" " "
All	17	87	27	611.25			" " "
All	21	87	27	587.82			" " "
Lots 1, 2, 3, and S. W. S. W	23	87	27	121.00			" " "
E. h'f	27	87	27	320.00			" " "
W. h'f	33	87	27	320.00			" " "
All	35	87	27	640.00			" " "
S. W. N. W., W. h'f S. W	3	88	27	120.00	S. W. N. W., W. h'f S. W	120	" " "
All	5	88	27	701.30	All	701.30	" " "
All	7	88	27	598.86	All	598.86	" " "
All	9	88	27	640.00	All	640	" " "
W. h'f, W. h'f N. E., W. h'f S. E	15	88	27	480.00	W. h'f N. E., W. h'f, W. h'f S. E	480	" " "
All	17	88	27	640.00	All	640	" " "
All	19	88	27	599.10	All	599.10	" " "
All	21	88	27	640.00	All	640	" " "
S. h'f, S. h'f N. E., S. h'f N. W	23	88	27	480.00	S. h'f, S. h'f N. E., S. h'f N. W	480	" " "
All	25	88	27	640.00	All	640	" " "
All	27	88	27	640.00	N. h'f, N. h'f S. W., S. W. S. W., N. W. S. E	480	" " "
All	29	88	27	640.00	All	640	" " "
E. h'f N. W., W. h'f N. W., S. W. q'r	31	88	27	285.28	E. h'f N. E., W. h'f N. W., S. W. q'r	285.28	" " "
All	33	88	27	640.00	All	640	" " "
All	35	88	27	640.00	N. h'f S. E., N. h'f S. W., N. h'f	480	" " "
W. h'f, W. h'f N. E., S. E. q'r	19	89	27	583.92	W. h'f, W. h'f N. E., S. E. q'r	583.92	" " "
206 S. h'f S. W	21	89	27	80	S. h'f S W	80	" " "
S. h'f N. W., S. W. q'r, W. h'f S. E., S. E. S. E	27	89	27	360	S. h'f N. W., S. W., W. h'f S. E., S. E. S. E	360	" " "
All	29	89	27	640	All	640	" " "
All	31	89	27	663.72	All	663.72	" " "
All	33	89	27	640	All	640	" " "
W. h'f N. W., S. E. N. W., S. W. q'r, W. h'f S. E	35	89	27	360	W. h'f N. W., S E. N. W., W. h'f S. E., S. W	360	" " "
E. h'f, N. h'f N. W., N. E. S. W	1	83	28	352.25	E. h'f, E. h'f N. W., N. E. S. W	352.25	" " "
All	1	84	28	696.26	All	696.26	" " "
E. h'f N. E	11	84	28	80	E. h'f N. E	80	" " "

E. h'f, E. h'f N. W., E. h'f S. W	13	84	28	480	E. h'f, E. h'f N. W., E. h'f S. W	480	"	"
All	25	84	28	640	All	640	"	"
All	1	85	28	645. 60	All	645. 60	"	"
E. h'f	11	85	28	320	E. h'f	320	"	"
All	13	85	28	640	All	640	"	"
E. h'f N. E., E. h'f S. E., S. W. S. E	23	85	28	200	E. h'f N. E., E. h'f S. E , S E. S. E	200	"	"
All	35	85	28	640	All	640	"	"
E. h'f	35	85	28	320	E. h'f	320	"	"
All	1	86	28	627. 88			"	"
N. h'f, N. E. S. W., S. E	3	86	28	503. 02			"	"
All	11	86	28	640			"	"
All	13	86	28	640			Iowa Central Air-line Railroad.	
E. h'f N. E., E. h'f S. E	15	86	28	160	E. h'f N. E., E. h'f S. E. q'r	160	"	"
All	23	86	28	640	All	640	"	"
All	25	86	28	640	All	640	"	"
E. h'f N. E., E. h'f S. E	27	86	28	160	E. h'f N. E., E. h'f S. E. q'r	160	"	"
All	35	86	28	640	All	640	"	"
All	1	87	28	622. 58	All	622. 58	Dubuque & Sioux City Railroad.	
N. h'f, S. W. q'r	3	87	28	518. 28	W. h'f, N. E. q'r	518. 28	"	"
All	5	87	28	673. 98	All	673. 98	"	"
All	7	87	28	621. 98	All	621. 98	"	"
All	9	87	28	640	All	640	"	"
W. h'f, S. E. q'r	11	87	28	480	W. h'f, S. E. q'r	480	"	"
All	13	87	28	640			"	"
All	15	87	28	640			"	"
All	17	87	28	640			"	"
All	21	87	28	640			"	"
All	23	87	28	640			"	"
All	25	87	28	640			"	"
All	27	87	28	640			"	"
N. h'f N. E., S. E. N. E., N. E. S. E	29	87	28	160			"	"
N. E. q'r, N. E. N. W., N. h'f S. E., S. E. S. E	33	87	28	320			"	"
All	35	87	28	640			"	"
207 All	1	88	28	709. 10	All	709. 10	"	"
All	3	88	28	719. 64	All	719. 64	"	"
N. h'f, lot 4	5	88	28	439. 87	N. h'f, lot 4	439. 81	"	"
S. E. q'r	7	88	28	160	S. E. q'r	160	"	"
All	9	88	28	640	All	640	"	"
S. W. q'r, S. h'f N. W	11	88	28	240	S. h'f N. W., S. W	240	"	"
N. h'f S. E. q'r	13	88	28	480	N. h'f, S. E. q'r	480	"	"
All	15	88	28	599. 68	All	599. 68	"	"
N. h'f S. E., E. h'f S. W	17	88	28	510. 55	N. h'f S. E., E, h'f S. W	510. 55	"	"
W. h'f, S. E. q'r, W. h'f N. E	19	88	28	541. 58	S. h'f, N. W., W. h'f N. E	541. 58	"	"
N. h'f	21	88	28	320	N. h'f	320	"	"
All	23	88	28	606. 68	All	606. 68	"	"
W. h'f	25	88	28	320	W. h'f	320	"	"
All	27	88	28	619. 88	All	619. 88	"	"
All	29	88	28	640	All	640	"	"
All	31	88	28	619. 08	All	619. 08	"	"
S. W. q'r	33	88	28	160	S. W	160	"	"
All	35	88	28	593. 25	Lots 3, 4, 5, 6, N. h'f, W. h'f S. W., N. E S. E	593. 25	"	"
W. h'f, S. W. N. E., W. h'f S. E	1	89	28	414. 03	W. h'f, S. W. N. E., W. h'f S. E. q'r	414. 03	"	"

Table "D"—Continued.

CERTIFIED UNDER DES MOINES GRANT.					CERTIFIED AS RAILROAD LANDS.		RAILROAD LIMITS.
	Parts of sections.	S.	T.	R	Acres.	Parts of sections.	Acres.	
All		3	89	28	589.02	All	589.02	Dubuque & Sioux City Railroad.
All		5	89	28	606.16	All	606.16	" " "
All		7	89	28	312.99	Lots 1, 2, 3, 4, 5, 6, N. E. N. E.	312.99	" " "
All		9	89	28	640	All	640	" " "
All		11	89	28	640	All	640	" " "
W. h'f, W. h'f N. E., W. h'f S. E., S. E. S. E		13	89	28	520	W. h'f, W. h'f N. E., W. h'f S. E., S. E. S. E	520	" " "
All		15	89	28	640	All	640	" " "
All		17	89	28	640	All	640	" " "
All		21	89	28	640	All	640	" " "
All		23	89	28	640	All	640	" " "
All		25	89	28	640	All	640	" " "
All		27	89	28	640	All	640	" " "
All		29	89	28	558.21	Lots 1, 2, 3, 4, N. E., E. h'f N. W., N. W. N. W	455.91	" " "
All (fr.)		31	89	28	1.41	Lot 1	1.41	" " "
All		33	89	28	640	All	640	" " "
All		35	89	28	640	All	640	" " "
	W. h'f, W. h'f N. E., W. h'f S. E	1	90	28	468.75			" " "
208	All	3	90	28	642.18			" " "
	All	5	90	28	638.94			" " "
All		7	90	28	640.54	All	640.54	" " "
All		9	90	28	640	All	640	" " "
All		11	90	28	640	S. h'f	320	" " "
W. h'f N. W		13	90	28	80	W. h'f N. W	80	" " "
All		15	90	28	640	All	640	" " "
All		17	90	28	640	All	640	" " "
All		19	90	28	640.13	All	640.13	" " "
All		21	90	28	640	All	640	" " "
All		23	90	28	640	All	640	" " "
S. W. N. W., W. h'f S. W		25	90	28	120	W. h'f S. W., S. W. N. W	120	" " "
All		27	90	28	640	All	640	" " "
All		29	90	28	240	All	640	" " "
All		31	90	28	490.27	All	490.27	" " "
All		33	90	28	640	All	640	" " "
All		35	90	28	640	All	640	" " "
All		19	89	28	446.84	All	446.84	" " "
S. h'f, N. W. q'r, S. W. N. E., lots 1, 2		5	91	27	599.67			" " "
All		7	91	27	668.54			" " "
W. h'f N. W		31	91	27	97			" " "
All		5	92	27	691.80			" " "
All		7	92	27	658.24			" " "
All		9	92	27	640			" " "
W. h'f N. W		15	92	27	80			" " "

All	17	92	27	640					
All	19	92	27	665.92					
All	21	92	27	615.65					
All	29	92	27	639.84					
All	31	92	27	668.68					
All	1	91	28	635.52					
All	3	91	28	627.42					
All	5	91	28	636.08					
Lots 1 and 2	7	91	28	32					
All	9	91	28	640					
All	11	91	28	640					
All	13	91	28	640					
All	15	91	28	640					
Lots 1, 2, E. h'f, E. h'f N. W., S. W. q'r	17	91	28	626.60					
Lots 1, 2, 3, 4	19	91	28	188.30					
All	21	91	28	640					
All	23	91	28	640					
209 All	25	91	28	640					
All	27	91	28	640					
Lots 1, 2, 3, 4, E. h'f, E. h'f N. W., N. E. S. W	29	91	28	612.25					
Lot 1	31	91	28	35.70					
All	33	91	28	640					
All	35	91	28	640					
All	1	92	28	690.80					
Lots 1, 2, 3, N. E. q'r, E. h'f N. W., N. W. N. W., E. h'f S. E., N. W. S. E	3	92	28	564.44					
N. h'f, S. E., lots 1 and 2	11	92	28	598.80					
All	13	92	28	640					
Lots 1 and 2	15	92	28	18.70					
All	23	92	28	640					
All	25	92	28	640					
Lots 1, 2, 3, 4, S. E. N. E., S. E. q'r	27	92	28	415.18					
Lot 1	31	92	28	20.90					
S. h'f N. E., S. h'f, lots 1, 2, 3, 4	33	92	28	581.62					
All	35	92	28	640					
All	1	87	29	668.16					
N. E. N. E	3	87	29	46.90					
All	1	88	29	679.73					
All	3	88	29	733.18					
All	5	88	29	740.10					
All	7	88	29	613.28					
All	9	88	29	640					
All	11	88	29	640					
All	13	88	29	640					
All	15	88	29	640					
All	17	88	29	640					
All	21	88	29	640					
All	23	88	29	640					
All	25	88	29	640					
All	27	88	29	640					
N. h'f N. E	29	88	29	80					
All	35	88	29	640					

Table "D"—Continued.

CERTIFIED UNDER DES MOINES GRANT.					CERTIFIED AS RAILROAD LANDS.		RAILROAD LIMITS.
Parts of sections.	S.	T.	R.	Acres.	Parts of sections.	Acres.	
Lots 1, 2, and 3, S. E. S. E	1	89	29	149.10	Lots 1, 2, 3, and S. E. S. E	149.10	Dubuque & Sioux City Railroad.
210 Lot 1	1	90	29	4.15	Lot 1	4.15	" " "
Lots 1, 2, 3, 4, S. E. N. E., S. E. q'r	13	90	29	406.90	Lots 1, 2, 3, 4, S. E. N. E., S. E	406.84	" " "
Lots 1 and 2	25	90	29	73.88	Lots 1 and 2	73.88	" " "
E. h'f N. E., E. h'f S. E	1	88	30	186.56	E. h'f N. E., E. h'f S. E. q'r	186.56	" " "
Total				258,758.73		*200,759.09	

* In limits of Mississippi & Missouri River Railroad, 34,269.81.
In limits of Iowa Central Air-line Railroad, 109,303.09 acres.
In limits of Dubuque & Sioux City Railroad, 57,127.19.

211 "B."—*Statement showing the whole area of the grant to the State of Iowa under the act of the 12th of July, 1862, and the amount sold and otherwise disposed of by the United States prior to the passage of said act; and showing, also, the area contained in the old "river lists" and the vacant lands within the limits of said grant above the mouth of the Raccoon Fork of the Des Moines River.*

		Acres.
Whole area of the river grant, from the Raccoon Fork to the northern boundary line of the State		558,004.06
Lands sold and patented and in process of patenting	44,348.60	
Pre-emption claims prior to the act of 12th of July, 1862	13,993.77	
Selected for railroads—six-mile limits	115,443.84	
Selected for railroads—fifteen-mile limits	118,009.16	
Selected under the swamp act of 1850	34,942.79	
Selected for university under act of 1840	2,332.25	
	329,070.41	
Selected and embraced in the old river lists	58,817.30	
Vacant sections and parts of sections in place, within the limits of the river grant	170,116.95	
		5,558,004.06

DEPARTMENT OF THE INTERIOR,
Washington, D. C., Feb. 28, 1865.

SIR: The authorized agents of the State of Iowa have taken exceptions to certain items charged by you to the State in setting apart the indemnity to be selected pursuant to the act of Congress, ap-
212 proved July 12, 1862, (Stat. vol. 12, p. 543,) for aid in improving the navigation of the Des Moines River.

From your report of the 14th March last, it appears that the entire quantity of lands inuring to the State, as determined under the opinion of my immediate predecessor, dated November 3, 1862, is 558,001.16 acres. You have decided that against said amount the State is chargeable—

	Acres.
1st. With lands found in place as heretofore listed	224,961.17
2d. With lands confirmed to the State by joint resolution of March 2, 1861, though not within five miles of the river	11,661.80
3d. With an excess of land that has been listed to the State of Iowa under the grant by act of Sept. 4, 1841	19,308.17
4th. With the amount of a special certificate issued	300,000.00
Total acres	555,931.04

Leaving a balance due of 2,070.12 acres.

The agents of the State, having taken an appeal from your action, claim that there is improperly included in the 1st item 12,813.51 acres of land that has heretofore been certified to the State under the grant of 500,000 acres by the act of Congress, approved Sept. 4, 1841, and that

the second and third items, as above, have been erroneously charged, and should not enter into the account.

They also claim that you erred in refusing to sanction the selection of even-numbered sections along the Des Moines River, which are alternate to the odd-numbered sections granted.

Having examined the subject, I am of the opinion that the 12,813.51 acres should not be charged in this account. These lands were approved to the State on the 17th February, 1851, under the grant of 500,000 acres by the act of Sept. 4, 1841; and it is to be inferred from other facts stated that they have been sold by the State during the time intervening since the approval. They lie above the Raccoon Fork of the Des Moines River, and hence were not a part of the original grant by
213 the act of August 8, 1846; nor did the confirmatory act of 1861 create a title superior to that which was confirmed and recognized by this Department on the 17th of February, 1851.

Indemnity for the tracts set apart for railroads within the five-miles limits of the Des Moines River grant has been allowed by the decisions of the Department, dated November 3, 1862, and April 7, 1863, and I am of the opinion that these 12,813.51 acres stand in the same category as the railroad tracts, and that indemnity for them should likewise be allowed.

In regard to the item of 11,661.80, I am of opinion that it is a proper charge against the State in this account, although the lands do not lie within five miles of the Des Moines River, as now determined and delineated by geographers and the public surveys.

These lands, lying adjacent to the stream now known as the East Fork of the Des Moines River, but then known as the Des Moines River itself, were included in approved lists prepared under the act of Congress of August 8, 1846, and have been regarded as confirmed to the State by the joint resolution of March 2, 1861.

Though the words of that resolution and of the law of 1862 admit of a strong argument in favor of the claim that these lands are granted to the State as well as those which can be brought within the description given in the last-mentioned law, it is the opinion of this Department that, under the act of 1862, they are to be charged to the State in adjusting the quantity of indemnity. They have been obtained for the object of the grants; and though entertaining some doubt upon the subject, I deem it to be the safer conclusion that it was not the intention of Congress that the quantity of the grant and selections should exceed the aggregate quantity of the odd-numbered sections lying within five miles of the Des Moines River, from its mouth to the northern boundary of the State of Iowa.

The proposal to offset a part of the lands inuring to Iowa under the Des Moines grant against a quantity she had received in excess of the grant of 500,000 acres by act of September 4, 1841, will be sanctioned if it can be done with the assent and under the proper authority of the State; and Messrs. Kilbourn and Mason, in behalf of this State,
214 now, by letters of 17th of February, undertake to complete an arrangement for a settlement.

The excess selections under the act of 1841, as you report, amount to 35,473. 54 acres.

Measures have, heretofore, been proposed by the State for reducing this excess, but they have not been carried into effect.

According to the principles above stated, the State has received on account of the grant of 1862 for the improvement of the Des Moines River:

1st. Lands in place	212,147.66
2d. On the east fork of river, and under joint resolution of 1861	11,661.80
3d. Special certificate issued	300,000.00
Making a total of	523,809.46

Leaving a balance of land due of 34,191.70 acres.

This balance is nearly equal to the excess certified under the act of 1841, and I am assured that an effort will now be made, on the part of the gentleman representing the State, for the satisfactory adjustment of this balance.

No further selections will therefore be allowed for the present.

I do not think, however, that this Department has power, under any of the acts of Congress upon the subject, to enforce against the wishes of the State, an arbitrary offset of the excess of the 500,000-acre grant against this balance due for the Des Moines improvement.

I approve your refusal to sanction the selection of the even-numbered sections within the limits of the grant as indemnity.

Should such selections be allowed, the alternation of the granted and reserved sections would be destroyed.

This alternation is expressly established by the acts of Congress making the grants, and for maintaining the same, many good reasons might be assigned.

The papers in the case are now herewith returned.

I am, sir, very respectfully, your obedient servant,

(Signed) J. P. USHER,
Secretary.

The COMMISSIONER OF THE GENERAL LAND OFFICE.

215 *Statement showing the extent of the railroad interference with the Des Moines River grant.*

Total amount of the certified railroad lists			233,453.00
Dubuque and Sioux City Railroad:			
Fort Dodge district—			
Six-mile limits	56,473.32		
Fifteen-mile limits	31,537.34		
		88,010.66	
Iowa Central Air-line Railroad:			
Fort Des Moines district—			
Six-mile limits	46,898.73		
Fifteen-mile limits	49,387.16		
Fort Dodge district—			
Fifteen-mile limits	13,470.96		
		109,756.85	
Mississippi and Missouri Railroad:			
Fort Des Moines district—			
Six-mile limits	12,071.78		
Fifteen-mile limits	23,613.71		
		35,685.49	
Total interference			233,453.00

To his excellency W. M. STONE,
Governor of the State of Iowa:

I herewith have the honor to submit to you a report of my labors as agent and commissioner of the State, to attend to any business necessary to be done in the city of Washington, D. C., relative to a grant of lands to the State of Iowa, by act of Congress approved July 12th, 1862, which lands inure to The Des Moines Valley Railroad Company.

I was first appointed agent by Governor Kirkwood, February 18th, 1863. I visited Washington immediately thereafter, and made every possible effort to obtain a certificate to enter the indemnity lands. Great delay in obtaining a certificate was caused by the Department not being furnished with a list of the lands sold and conveyed by the State, for which indemnity was to be given.

216 On the 25th day of April, 1863, the Commissioner of the General Land Office issued a special certificate to enter three hundred thousand (300,000) acres, authorizing the selection of any public lands in the State, subject to entry at one dollar and twenty-five cents per acre.

The following is a copy of the

SPECIAL CERTIFICATE.

Whereas the act of Congress approved the 12th July, 1862, entitled "An act confirming a land grant to the State of Iowa the alternate odd-numbered sections in place and undisposed of, lying within five miles of the Des Moines River, between the Raccoon Fork and the northern boundary of said State;" and whereas said act provides that if any of said lands shall have been sold or otherwise disposed of by the United States before the passage of said act, excepting those released to the grantees of the State of Iowa under the joint resolution of March 2, 1861, the Secretary of the Interior shall set apart an amount of lands within said State to be certified in lieu thereof; and whereas it appears in the preliminary adjustment of said grant that the United States had sold and otherwise disposed of a certain quantity of land prior to the passage of said act, for which the said State is entitled to indemnity under the act aforesaid: Therefore this is to certify that, upon the presentation of this paper to any of the land offices in the State of Iowa, accompanied by written authority from the governor, authorizing the party presenting the same, as State agent, to make indemnity selections under said act, it shall and may be lawful for the register and receiver to receive lists of such indemnity selections from such agent, which lists must be verified by the signature of the said agent attested by the register and receiver, and be accompanied by the certificate that the lands so selected are vacant public lands, subject to entry at private sale at $1 25 per acre; the aggregate of such selections to be restricted to three hundred thousand acres approximate to the actual quantity, to be reduced or increased according to the result of *of* a final adjustment; and no selections to be made unless of tracts in compact form, not less than a quarter section, unless where a fraction of less quantity is selected and taken as equivalent to 160

217 acres. Upon such selections being filed and verified, as indicated and attached to this special certificate, the register and receiver are required to make entries accordingly on the plats and records of their office, and make monthly abstract returns to this office of such selections separate from the ordinary monthly returns.

When the aggregate authorized by this certificate shall have been se-

lected, this certificate, with the verified lists, must be returned to this office.

Given under my hand and the seal of this office at the city of Washington this 25th day of April, A. D. 1863.

[SEAL.] (Signed) J. M. EDMUNDS,
Commissioner of the General Land Office.

In the months of July, August, and September, of the same year, I caused the 300,000 acres to be entered in the Fort Dodge and Sioux City land districts. I furnished a copy of the lists to the register of the State land office at Des Moines.

On the 23d day of January, 1864, my commission was renewed by your excellency.

While I was in Des Moines in the spring of 1864, I reported to the Commissioner of the General Land Office as follows:

DES MOINES, *March* 9, 1864.

Hon. J. M. EDMUNDS,
Commissioner of General Land Office, Washington, D. C.

SIR: I have the pleasure to inclose you herewith the lists of "indemnity lands" entered by me as agent of the State of Iowa, with a certificate of Governor Stone attached, accepting and confirming the selections.

The original "special certificate" for 300,000 acres, and my commission as agent from the governor of Iowa, you also find attached to the list, agreeably to your instructions.

I am, respectfully, your obedient servant,
D. W. KILBOURNE.

218 The following is a copy of Governor Stone's certificate:

STATE OF IOWA, *ss:*

I, W. M. Stone, governor of the State of Iowa, do hereby acknowledge the validity of the foregoing selections which are binding upon the State under the act of Congress of the 12th July, 1862, and hereby apply to the Commissioner of the General Land Office to certify the title to the State accordingly.

In witness whereof I have hereunto set my hand and caused to be affixed the great seal of the State of Iowa. Done at Des Moines the 21st day of January, 1864.

[SEAL.] (Signed) W. M. STONE.

By the governor:
(Signed) JAMES WRIGHT,
Secretary of State.

The following acknowledgment of the receipt of the list was duly received:

GENERAL LAND OFFICE, *March 17th*, 1864.

D. W. KILBOURNE, *Keokuk, Iowa.*

SIR: Your letter of the 9th inst. is received with lists of indemnity selections at the land office at Fort Dodge and Sioux City, Iowa, under the act of 12th July, 1862.

Very respectfully, your obedient servant,
J. M. EDMUNDS,
Commissioner.

On the 19th of December, 1863, I addressed the following communication to the Commissioner of the General Land Office:

WASHINGTON, *Dec. 19th*, 1863.

Hon. J. M. EDMUNDS,
Commissioner of General Land Office.

SIR: On behalf of the State of Iowa we hereby request that a
219 complete adjustment of the grant of July 12th, 1862, in extension of the grant of August 8th, 1846, giving lands for the improvement of the Des Moines River be made at your earliest convenience, and that a certificate be made for the remainder of the lands to be selected as indemnity lands under said grant.

We understand that among the "clear lands" which have been set apart to the State under the said grant of 1862 are some twelve thousand acres which had been selected by the State as school lands under the law of 1841 as amended by a subsequent act of Congress. This land had been selected as school lands, as aforesaid, after the passage of the Des Moines River grant of August 8th, 1846. And as that grant was for several years supposed to extend to the source of the river, the State authorities were notified that they could select other lands in their stead.

This, however, was not done so far as we have been able to ascertain; and when the decision of the Supreme Court of April, 1860, limited the Des Moines River grant of 1846 to the Raccoon Fork the selection of the twelve thousand acres became good and valid.

We therefore request that the said amount of lands be awarded to the State, and that indemnity lands to the same amount be granted us in their stead. We also understand that some eleven or twelve thousand acres of land lying more than five miles from the Des Moines River proper, and which had been improperly certified to the State as part of the lands embraced in the Des Moines River grant of 1866 aforesaid, and were therefore included in the relinquishment made to the State of Iowa by the joint resolution of March 2, 1861, had been or are proposed to be deducted from the grant made by the act of July 12th, 1862, aforesaid.

Against this we respectfully protest, and ask from you a re-examination of the matter, and a direction to the proper officer that said deduction be not made, but that the whole amount of lands granted to the State of Iowa by virtue of the said act of July 12, 1862, be set apart to the State accordingly.

In order that the adjustment of the grant may be made final and complete, we hereby relinquish on the part of the State all claim to any lands embraced among the odd-numbered sections along the Des
220 Moines River and within five miles thereof, which now appear to be claimed by pre-emptors, or which, for any other reason, are not included in the lists of "clear lands" set apart to the State under said grant of July 12th, 1862.

We also request to be informed whether there is any to prevent us from selecting the even-numbered sections of land along the Des Moines River, as part of the indemnity lands to which we are entitled under the grant of July 12, 1862.

Your certificate, previously given, authorizes us to select any lands now subject to sale at $1 25 per acre. These even-numbered sections are of this class, and we hope to be permitted to select a portion of these lands accordingly.

Very respectfully, your obedient servant,

D. W. KILBOURNE.

On the first of March, 1864, the Commissioner denied the requests made in the foregoing communication, and confirmed his former decision. From his decision we appealed to the Secretary of the Interior.

From March, 1864, to February, 1865, we persistently urged Mr. Usher, in person and by letter, to consider and decide the case.

Failing in my efforts thus far, as it seemed to me, to convince Mr. Usher that the State of Iowa, or her railroad interests, were worthy of any consideration at his hands, we decided to make further personal efforts. Accordingly, on the 1st of February, 1865, I went to Washington, and for four weeks I did not fail to call on that dignitary daily, excepting Sundays, and a few instances when he named a day to see me, leaving one to three days intervening.

Finally, on the 28th day of February, 1865—eleven months after the papers in the case were placed before him—we were handed his decision in Washington, dated as above.

The questions in the case were simple, and could have been decided by an efficient and competent officer as well by two or three days' consideration, as by a whole year, which was taken. I cannot,
221 therefore, divest myself of the conviction, that by causing such unnecessary delay, and loss of time and expense, Mr. Secretary Usher imposed upon your agent, and trifled with the interests of the State.

I refer to a copy of the decision of Secretary Usher accompanying this report, marked "A."

From this decision we appealed to the President on one point only, to wit, in regard to the 11,661.80 acres of land.

In the absence of any law for such appeal, we obtained the written request of our Senator and Representatives in Congress to the President, to receive the papers in the case, and refer them to the Attorney General.

The present worthy Secretary of the Interior, Mr. Harlan—then Senator—favored us by presenting the papers to the President.

Very soon after this, and before the papers were handed to the Attorney General, Mr. Lincoln was assassinated, which caused delay of several weeks in referring the papers.

I was in Washington in September last, when I learned that the Assistant Attorney General had the case in charge, and that a decision might be expected within a reasonable time. I have not yet been advised that the Attorney General has made his decision.

The Secretary of the Interior claims (as appears by his decision) that from the State of Iowa is due the United States for excess selections of school land under the act of 1841, 35,473.54 acres, and that there remains to be selected as indemnity lands 34,191.70 acres, but the Secretary forbids any further selections until there is a satisfactory adjustment of the claim for the above excess.

I proposed as agent of the State, and consent of The Des Moines Valley Railroad Company, and with the approval of your excellency, to adjust this matter between the United States and the State of Iowa, by an offset of the same number of acres of indemnity lands as are claimed to be due by the State to wit, 35,473.54 acres.

222 The balance of the indemnity lands due, as appears by the decision of Secretary Usher, is 34,191.70 acres, which with 1,281.94 deducted from the 300,000 acres heretofore entered, but not yet certified to the State, and added to the 34,191.70 acres above, will make the 35,473.54 acres, and would settle the claim of the United States in full.

The State can then settle with The Des Moines Valley Railroad Com-

pany at $1 25 per acre, for the 35,473.54 acres of land so retained by the United States out of the indemnity lands inuring to said company in settlement of the claim of the United States against the State of Iowa. This would fully adjust this long-standing, troublesome, and, I suppose, just claim of the United States against the State of Iowa. Under this arrangement the State will retain many of the lands of the excess sections, which are now very valuable, instead of reconveying them to the United States, as the legislature has heretofore authorized the governor to do.

The Secretary of the Interior decides that the offset will be sanctioned, "if it can be done with the assent and under the proper authority of the State."

I have conferred with the railroad company, and they will fully sanction the offset; hence, I see no obstacle now in the way of a speedy settlement of the whole matter.

The railroad company express the opinion that, for the sum of $35,346 46 paid to Brown & Allender, February 5th, 1861, the State should not require interest, inasmuch as the State realized the money for a large portion of these excess selections of 1841 many years ago, and now have an opportunity to settle with the said railroad company for these lands at one dollar and twenty-five cents per acre without interest.

A statement showing the whole area of the grant to the State of Iowa under the 12th July, 1862, and the disposition of the same, marked "B;" also a statement showing the extent of the railroad interference with the Des Moines River grant under act of Congress of 1856, marked "C," will accompany this report.

Many vexed questions in regard to this grant seemed to arise, growing out of the construction given to the several acts of Congress,
223 and there has seemed to be a reluctance on the part of the officers of the proper Departments to take up and consider the matter.

I have used my best efforts to secure an adjustment of the said land grant and to get the lands certified to the State.

I am now encouraged to believe that as soon as the proposed settlement by offset can be consummated, I can make a full and satisfactory adjustment with the Commissioner of the General Land Office, so that he will certify the lands to the State without any further delay.

Respectfully submitted.

D. W. KILBOURNE, *Agent.*

KEOKUK, *January 4th*, 1866.

224 EXHIBIT X.

Mortgage or deed of trust to W. Gilman and N. A. Cowdrey, in trust, to secure the payment of $4,690,000, *at eight per cent. per annum interest, due October 1st*, 1868.

This is a first mortgage upon about 465,000 acres of land, and upon the railroad and its equipments, extending from Des Moines to Fort Dodge, both in Iowa, a distance of 85 miles.

And it is a second mortgage on the railroad and equipment extending from Keokuk to Des Moines, both in Iowa, a distance of about 162 miles; the mortgage on said 162 miles prior in lien to this is to secure the payment of $2,310,000; the 465,000 acres of land are pledged

as a sinking fund to pay said $4,690,000 at the market price of the bonds issued, not exceeding 120 per centum and accrued interest.

This indenture, made at the city of Keokuk, in the State of Iowa, on the first day of October, A. D. 1868, between The Des Moines Valley Railroad Company, a corporation duly and legally incorporated by and under the laws of the State of Iowa, parties of the first part, and W. S. Gilman and N. A. Cowdrey, both citizens of the city and State of New York, parties of the second part, witnesseth:

That whereas the said Des Moines Valley Railroad Company are the owners in fee of the railroad extending from the city of Keokuk, in the State of Iowa, to the city of Des Moines, in said State, a distance of
225 about one hundred and sixty-two (162) miles; which line of railroad is now subject to a mortgage or deed of trust made by said railroad company on the 16th day of February, 1867, to Luther C. Clarke and Samuel R. Curtis, in trust, to secure the payment of two millions three hundred and ten thousand ($2,310,000) dollars, all of which is now outstanding, and a valid claim against said railroad company to that amount;

And whereas said railroad company are desirous of continuing and extending their railroad from Des Moines to Fort Dodge, a distance of about eighty-five (85) miles, and equipping the same; and are also desirous of procuring additional equipment for, and repairing and rebuilding a portion of their existing line of road above described;

And whereas said railroad now is, and will become by the constructing of said railroad to Fort Dodge, entitled to the benefits of certain acts of Congress, and also certain acts of the State of Iowa, granting lands to aid in the building of said railroad;

And whereas said railroad company have entered into a contract with the Des Moines Railway Construction Company, by which said last-named company agree to construct and equip said railroad, and to rebuild and repair portions of the existing line of said railroad, and to prepare and place upon the same a large amount of additional equipment;

And whereas said railroad company are indebted to various parties by judgments obtained against them, and by some of said parties being the holders of income bonds and other claims against said railroad company;

And whereas said railroad, for the purpose of paying said indebtedness, and getting their present line of railroad rebuilt, repaired, and re-equipped, and for the purpose of getting said railroad already built extended to Fort Dodge and fully equipped, have resolved to issue and deliver bonds of one thousand dollars each, to be numbered from number 1 to 4690 inclusive; all of which bonds are duly and legally made and delivered by said railroad company, and in the form following:

226 UNITED STATES OF AMERICA, *State of Iowa:*

No. .] [$1,000.

Know all men by these presents that The Des Moines Valley Railroad Company are indebted to Winthrop S. Gilman, or bearer, in the sum of one thousand dollars, which said company promise to pay to the bearer hereof, on the first day of October, A. D. 1898, at the office or agency of said company, in the city of New York, with interest thereon from the first day of October, A. D. 1868, at the rate of eight per centum per

annum, payable semi-annually at the office or agency of the company, in the city of New York, on the first day of April and October in each year, on the presentation and surrender of the annexed coupons as they severally become due; and in case of the non-payment of interest for six months, then, without demand or notice, the principal of this bond shall become due and payable in the manner and with the effect provided in the deed of trust given to secure the payment of this bond.

The makers of this bond reserve the right to themselves, and to their successors, to redeem or pay this bond at their option, upon giving the notice provided in the deed of trust, at one hundred and twenty per centum and the accrued interest thereon.

The holder of this bond shall be entitled at any time, within ten days after any dividend shall be declared and become payable upon said stock, to convert the principal thereof into the stock of said railroad company at par, receiving therefor dollar for dollar, upon the surrender of this bond with the unpaid coupons attached.

This bond is one of a series amounting to $4,690,000, all of which are executed and delivered in conformity with the laws of Iowa, and the vote and resolution of the board of directors of said railroad company, the makers hereof.

The bearer hereof is entitled to all the security derived from a mort-
gage or deed of trust duly executed and delivered to W. S. Gil-
227 man and N. A. Cowdrey, trustees, conveying the line of railroad and its equipment from Keokuk to Des Moines, (subject to a prior mortgage of $2,310,000,) and the said road extended from Des Moines to Fort Dodge free from any other lien; also about 465,000 acres of land granted by Congress to aid in building said railroad free from any other lien, the proceeds of sales of which land are to be a sinking fund for the ultimate payment of principal and interest of said bonds.

This bond shall not be valid or obligatory until it shall have been authenticated by a certificate endorsed hereon, and duly signed by both of said trustees, or their or his successor or successors, and is issued, received, and held, subject to the terms and conditions contained in said mortgage or deed of trust.

In witness whereof the said Des Moines Valley Railroad Company have caused their corporate name and seal to be hereto affixed by their president and secretary, on the first day of October, A. D. 1868.

DES MOINES VALLEY RAILROAD COMPANY,

By , *President.*

[SEAL.] , *Secretary.*

(Endorsed upon back of bond:)

$1,000 *bond, No.* , *Des Moines Valley Railroad Company.*

☞ First mortgage on 465,000 acres of land, and on railroad from Des Moines to Fort Dodge, 85 miles; and a second mortgage, subject to a first mortgage of $2,310,000 (or less than $15,000 per mile) on railroad from Des Moines to Keokuk, 162 miles.

Eight per cent. convertible, interest first of April and October.

228 This is to certify that the above bond is included in a mortgage to us, dated October 1st, 1868, purporting to be a first mortgage on about 465,000 acres of land, and on the railroad and all its equipment, income, and franchises from Des Moines to Fort Dodge; and a second mortgage on the railroad and its equipment, income, and franchises from Des Moines to Keokuk, in trust, to secure the payment of $4,690,000, and that said mortgage is properly stamped with United States revenue

stamps; and that we have caused it to be duly recorded in the counties through which the road passes, and in which the land lies.

Trustees.

Now, therefore, the said Des Moines Valley Railroad Company, for and in consideration of the premises, and of the sum of four millions six hundred and ninety thousand dollars, received to their full satisfaction of said trustees, and for the purpose and with the intent of securing the payment of all of said bonds, with the interest due and to grow due thereon, and to secure the payment to said trustees of said sinking fund, hath granted, bargained, sold, conveyed, assigned, transferred, and confirmed, and by these presents doth grant, bargain, sell, convey, assign, transfer, and confirm, subject to the terms and conditions of said first mortgage to Clark and Curtis, to said Gilman and Cowdrey, citizens of the city and State of New York, as trustees and in trust, and to the survivor or survivors of them, and to their successors or successor, the entire corporate property of the said railway company, and all its franchises and privileges, constructed or to be hereafter constructed, now held and acquired, or to be hereafter constructed and acquired, extending from the present terminus of their line of railroad in the city of Des Moines, through the counties of Polk, Dallas, Boon, Green, and Webster, to the town of Fort Dodge.

And also, subject to the lien created and existing by reason of the mortgage or trust deed above referred to, in favor of said Clark
229 and Curtis, the entire corporate property of said railway company, and all its franchises and privileges, constructed, or to be hereafter constructed, now held and acquired, or to be hereafter constructed and acquired, extending southerly from the city of Des Moines through the counties of Polk, Jasper, Marion, Mahaska, Wapello, Davis, Van Buren, and Lee, to the Mississippi River at Keokuk.

Also, subject to said Clark and Curtis mortgage, all the right of way and land occupied by said railroad and appurtenances thereto belonging, from Keokuk to Fort Dodge; and also, subject to said Clark and Curtis mortgage, all the lands acquired and appertaining, or which may hereafter be acquired and appropriated for station-houses, depots, engine-houses, car-houses, warehouses, machine-shops, work-shops, superstructures, erections and fixtures, together with all the appurtenances, rights, and privileges thereunto belonging, at any and all points on said road from and including Keokuk and Fort Dodge.

And also, subject to said Clark and Curtis mortgage, all and singular, the locomotives, tenders, passenger cars, freight cars, and every and all other cars, carriages, tools, machinery, wood, coal, and fuel, and equipments for said railroad, and now owned, or which shall hereafter be owned or acquired by said company.

And also, all goods and chattels, wood, fuel, oil, or supplies now owned, or which shall hereafter be owned, by said company, and in any way relating or appertaining or belonging to or connected with said railway, or the running or operating the same.

And also, all rents, issues, income, tolls, profits, currency, moneys, rights, benefits, and advantages derived, or to be derived, had, or received therefrom by said company in any way whatsoever.

And also, free and clear from all incumbrances all the lands which may have been, or which shall hereafter be, donated or granted by or in any other manner acquired from the United States, or from or through

the State of Iowa, to aid in building the railroad of this company, or any part of it; and any such lands not required for use by the railroad for their traffic, to which this company are, or shall hereafter be, entitled, shall be specially set aside and appropriated to the pur-
230 poses of this mortgage, together with all and singular, the emoluments, income, and advantages, tenements, hereditaments, and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and *and* profits thereof; and also, all the estate, right, title, interest, property, claim, and demand whatsoever, in law or in equity, of the said parties of the first part, of, in, and to the same, and each and every part and parcel thereof, with the appurtenances.

It is agreed by and betweeen the parties hereto that said Clark and Curtis mortgage is limited, so far as the same is a lien upon the income of said railroad company, to the income derived from that part of said railroad extending from Keokuk to Des Moines; and, so far as it is a lien upon the equipment and supplies of said railroad, to such pro rata of said equipment and supplies as the whole length of said railroad now constructed, or hereafter to be constructed, bears to the distance from Keokuk to Des Moines; and that said Clark and Curtis mortgage is not a lien in any manner or form upon the railroad, or any of its appurtenances hereafter acquired, constructed or built from the present terminus of said railroad in Des Moines, northerly or westerly.

In the event of said Company extending their railroad northerly to the Minnesota State line, or to any intermediate point, then they reserve from this mortgage such pro rata of the income, equipment, and supplies of said railroad as the length in miles of new extension bears to the distance in miles from Keokuk to Fort Dodge.

To have and to hold the above granted and bargained premises with the appurtenances thereof, unto the said trustees, and to the survivors and survivor of them, and to their and his successors and successor, and their and his assigns, in trust, and upon the trust, uses, and purposes hereinafter expressed of and concerning the same, for the use and benefit of the person or persons, firm or firms, bodies politic or corporate, who shall hereafter, at any time, become the purchasers or holders, owners or bearers, of any or either of said bonds, subject to the terms, provisions, and stipulations in said bonds contained,
231 and also subject to the possession and management of said railroad and property by said company and its successors and assigns, so long as no default shall be made in the payment of either interest or principal of said bonds, or in any or either of them, or in payment of the amount of money as is herein provided for the sinking fund, and so long as the said company shall well and truly observe, keep, and perform all and singular the covenants, agreements, conditions, and stipulations in said bonds, and in this indenture contained and set forth, and which are to be observed, kept, and performed by and on the part of said company.

It is further agreed, that said company, with the consent in writing of said trustees or their or his successor or successors, may sell and convey any lands herein mortgaged, and not necessary or required to be retained for the convenience and use of the company; and that the proceeds of said sales, whenever they amount to the sum of one thousand dollars, shall be applied to the purchase and cancellation of one or more of said mortgaged bonds, or of some bonds which are a prior lien upon the premises mortgaged. And said trustees shall then be authorized to release the premises sold from this mortgage; in lieu of

purchasing and cancelling said bonds, the proceeds of said sale may be invested, under the sanction and with the approval of said trustees, in the purchase of other property, real or personal, required for use by said railroad company, which shall be embraced in and covered by this mortgage.

It is further agreed by and between the parties hereto, that said railroad company shall take up and exchange $462,000 of its income bonds described in their indenture with G. Talbot Olyphant, dated June 11, 1864, to which reference is made, by giving the holders thereof the bonds secured by this mortgage, as follows, viz, upon the receipt of $1,000 of said income bonds and $100 in money, the said railroad company will give $1,000 of the 8 per cent. bonds secured by this mortgage—any difference of interest to be equitably adjusted at the time of making said exchange—excess of accrued interest on said income bonds to be treated as part of said $100 cash to be paid.

It is also agreed that said railroad company's supplemental
232 bonds, so-called, amounting to $120,000, dated September 5th, 1866, now outstanding, may be exchanged for the bonds issued and secured hereunder, dollar for dollar.

And this indenture further witnesseth: That the said railroad company doth hereby covenant, promise, and agree, to and with the said parties of the second part, that the said party of the first part will, with all reasonable despatch, make and deliver to the said parties of the second part, true and accurate list', schedules, and maps, showing the numbers, precise quantity of lands, location, position, and boundaries of each and every piece, parcel, section' or parts of sections of the aforesaid lands not required for the necessary or convenient operation of the railroad of the party of the first part, and also list' and schedules showing the minimum valuation and prices at which the respective pieces, parcels, sections or parts of sections of said lands may be sold and conveyed, as hereinafter provided, which shall be approved by the board of directors, and signed by the president and secretary of the party of the first part, and also approved and signed by the parties of the second part. But it is understood and agreed by and between the parties hereto, that the said party of the first part, by and with the consent and approval in writing of the parties of the second part, or of the survivors of them, or of their successor or successors, may, at any time, not oftener than once in each year from the date of the last approval by the parties of the second part, revalue all of said land not then sold, and re-affix to each parcel or section of the then unsold lands a new minimum price, and upon the approval of the said parties of the second part of such new valuation or minimum prices, the same shall thereafter become binding upon all the parties hereto.

And it is further agreed that, whenever the said company shall from time to time certify to said trustees that it has sold or contracted for the sale of any sections, parcel or parcels of said lands, at a sum not less than the minimum price thereof, fixed for the same in the manner aforesaid, the said trustees, or the survivor or survivors of them, or their successors or successor, shall and will join with the said company
in duly executing a deed or contract sufficient in law to convey
233 to the purchaser, his heirs or assigns, all the right, title, interest, property, possession, claim, demand and estate, of both the parties to this indenture, in and to the parcel or section of land so sold. And the said parties of the second part, shall and will deliver such deed or contract to such purchaser, upon receiving from him the whole price of such parcel or section of land, either in cash or in the mort-

gage bonds hereby secured, at the par value thereof, or partly in cash and partly in said bonds; or if such land be sold upon credit, then upon receiving from such purchaser such portion of the said price as or shall be agreed to be paid in cash, (which shall not be less than ten per cent. of the whole price,) together with a bond for the residue of the purchase-money, secured by mortgage upon the land thus sold, executed by the purchaser to said parties of the second part in due form, to secure to them the payment of the residue, with interest thereon at the rate of not less than three per cent. per annum, payable semi-annually or annually, and every such bond and mortgage shall contain a provision—to the effect that in case the interest thereon shall remain in arrear and unpaid for six months after the same shall become due, then the whole amount of the principal sum mentioned therein shall thereupon immediately after the expiration of said six months become due and payable; and every such mortgage shall also contain a personal obligation on the part of the purchaser and mortgagor to pay the principal and interest thereby secured, at the times and according to the terms, tenor, and legal effect of said bond therein mentioned. The deeds so to be given shall bear even date with the bonds and mortgages so to be executed, and shall specify the actual and true amount of the whole consideration money or price, and the manner in which the same has been paid or secured; every such bond and mortgage shall be held by said trustees for the purposes of the trust herein declared, and as a part of the trust estate, and as security for the bonds this mortgage is given to secure.

And it is further agreed, that the consideration-money on any such sales of lands may be paid either in whole or in part by delivering to said parties of the second part to be cancelled, one or more of
234 the bonds secured by this mortgage at their par value; and payments upon any bonds and mortgages so received by said parties of the second part, either for principal or interest, may be made by delivering to said parties of the second part to be cancelled, one or more of the bonds secured by this mortgage at their par value.

And it is further agreed that the holders of any of the bonds or past-due coupons thereof, secured by this mortgage, shall have the right and privilege of purchasing any of said lands not required by the company for the necessary or convenient operation of their railroad, at the then minimum price fixed by said company and approved by said trustees, and to pay therefor in said bonds or coupons secured by this mortgage at their par value.

And the said company further covenant and agree to and with the said trustees, their or his successors or successor, in the trust created by this deed, that, for the further security and ultimate redemption of the bonds secured by this mortgage, all moneys, and bonds and mortgages, and the proceeds and avails of all such bonds and mortgages, which may be received by said trustees, and the survivors or survivor of them, or their successors or successor, as proceeds of the aforesaid lands, or otherwise, under the trust herein declared, shall constitute a sinking fund for the redemption and payment of the bonds issued by said company and secured by this mortgage.

And it is mutually agreed that said trustees shall, immediately after any payment in money is made them, deposit the amount in the United States Trust Company of the city of New York, or some other good and safe place of deposit in the city of New York. Whenever, from time to time, there shall be any money so on deposit, said parties of the second part may in their discretion, apply the same to the purchase or redemp-

tion of so many of the aforesaid mortgage bonds as such moneys shall, from time to time, be adequate to redeem, at their market value in the city of New York; provided such market value shall not exceed one hundred and twenty per centum, exclusive of accrued interest. And whenever said moneys so on deposit, or in the hands of the said parties
235 of the second part, shall amount to the sum of twenty thousand dollars, it shall then be the imperative duty of the said parties of the second part to apply the same to the redemption of so many of said mortgage bonds as such sinking fund is adequate to redeem and pay.

In the event of said trustees not being able to purchase said bonds at a price not exceeding one hundred and twenty per cent., exclusive of accrued interest, they shall, so often as they have fifty thousand dollars or more in their hands, applicable to the payment of bonds secured by this mortgage, without delay, designate by lot so many of said bonds as they have money to pay, to which the money received by them shall be applied in payment at the rate of one hundred and twenty and accrued interest. The trustees shall give notice of the numbers designated; if the owner or holder of the bonds designated for payment is known to them, a personal notice shall be sufficient; if they do not know the owners or holders of all said bonds so designated, then said trustees shall give notice of the numbers of the bonds so designated in two or more of the daily newspapers printed in the city of New York, and shall continue said notice at least once in each week until the first day of the succeeding April or October, when the interest on the bonds so designated shall cease, and neither the company or their successors shall be any longer liable for the payment of the principal or interest thereof, and the premises embraced in this mortgage shall thereafter be discharged from so much of the lien hereby imposed thereon as the bonds amount to thus designated for payment.

And it is further mutually agreed that the said trustees shall and will cancel and discharge each and every of the bonds secured by this mortgage, with all the interest-warrants annexed thereto, or accompanying the same, which they shall pay, purchase or redeem, as aforesaid, or which they may receive in any payment for land as aforesaid; and that they will make, or cause to be made, upon each bond, a brief note or memorandum, stating how, when, and for what consideration, the same was cancelled, from whom the said mortgage bond was received, and in such manner and form as will enable the said company to trace the transaction.

236 The said trustees shall immediately return so many bonds as are paid by them to the company, cancelled; and both the company and said trustees shall keep a proper registry and account of all the bonds paid by them, or designated to be paid as aforesaid, which registry or account shall be open for the examination and inspection of any parties in interest, at all reasonable times; and the number or amount of said bonds thus cancelled shall be reported by said company to the stockholders of said company, in each annual statement of the company made to the stockholders.

And the said company do hereby covenant, promise, and agree, for itself, its successors and assigns, to and with the said trustees, the survivor and survivors of them, and their and his successors or successor, that the said company will well and truly pay each and every of said bonds issued by them, and secured by this mortgage, together with the semi-annual interest to become due thereon, at the rate of eight per cent. per annum, at the times, in the manner, and at the place specified therein.

And that in case said company shall, for the space of six months, make default in the payment of the semi-annual interest to become due upon any, either, or the whole of said mortgage bonds, then, after the expiration of six months from the time it became due, and without demand or notice, at the election or option of a majority of the holders of said bonds, the whole principal sum mentioned in each and all of said mortgage bonds then outstanding, shall forthwith become due and payable, and the lien or incumbrance hereby created for the security and payment thereof, may at once be enforced.

And it is agreed, in case of the default of the payment of the semi-annual interest as above provided, that said trustees, and the survivor or successors of them, are hereby expressly authorized and empowered, upon the request in writing of a majority of the owners or holders of said bonds, to enter into and upon, and to take actual possession of, all the property, real and personal, and rights, franchises, and privileges of the premises hereby conveyed, and each and every part there-
237 of, and by themselves, or by their attorneys or agents, have, hold, use, and enjoy the same, and from time to time make all repairs and replacements, and all useful alterations, additions and improvements thereto, as fully as the parties of the first part might have done before such entry; and to collect and receive all tolls, freight, incomes, rates, issues, and profits of the same, and of every part thereof. And the said trustees, and the survivors and survivor of them, and their successors and successor, shall and may, and hereby are expressly authorized and empowered to, sell at public auction to the highest bidder, the entire property, real and personal, rights, franchises, and privileges herein conveyed. Said sale shall be either in the city of Des Moines or the city of New York; at least three months' notice shall be given of the time, place, and terms of said sale, by advertising the same in one or more newspapers of good circulation in each of the cities of Keokuk, Des Moines, and New York, and wherever else required by law, and continuing such advertisement at least once a week until the time of sale; and they may, at their discretion, adjourn said sale from time to time, giving reasonable notice of the time and place where it will take place. And as the attorney or attorneys in fact of the said company, or their successors, shall have full power and authority to make, execute, and deliver to the purchaser or purchasers thereof, good, valid, and sufficient deed or deeds, conveyance or conveyances, assignments or transfers, in fee-simple or otherwise, of the entire property herein conveyed, and all the rights, franchises, and privileges of the company or its successors; which conveyance or conveyances, transfer, or deeds, shall vest in the purchaser or purchasers all the right, title, interest, and estate whatsoever, reversionary or in possession, or which they may be entitled to receive, have, or hold of the said company; and said sale shall be a complete and perpetual bar, or estoppel, both in law and in equity, against said company, its successors and assigns, and all persons or parties, claiming by, from, or under it or them, in anywise or manner whatsoever. And the said company hereby covenant and agree to waive, and expressly covenant and agree that neither the company or their successors shall have or claim any advantage of any valuation, appraisement, or extension laws.

238 The amount of the purchase-money on said sale may be paid and satisfied, in whole or in part, by the outstanding mortgage bonds, or any of them, secured hereby, and said bonds shall be received in whole or in part payment and satisfaction by the said trustees, their survivors or survivor, successors or successor, according to their value,

to be ascertained and determined by the net amount arising from said sale.

And out of the moneys received from said tolls, freights, incomes, rents, profits, and earnings of said railroad and premises, or out of or from the proceeds of said sale, so to be made as aforesaid, after first deducting the expenses, disbursements, cost, charges, and counsel fees incurred in and about the conducting of said sale, or the working and operating said railroad, including the compensation and commission of said trustees in and about the execution of this trust, and all expenses of repairs, replacements, alterations, additions, and improvements, and all payments for taxes, assessments, charges, or liens on said premises, or any part thereof, the said trustees shall, if the amount secured be sufficient for that purpose, pay said mortgage bonds, or so many of them as shall be then outstanding and unpaid, together with all interests then due upon the same; and if the amount be insufficient, then to divide the same pro-rata among the outstanding bonds; and the surplus of all such moneys or proceeds of sale, if any there be, shall be paid to said company or their successors or assigns.

And it is further covenanted and agreed, by and between the parties hereto, that, in case of any judicial foreclosure sale or other sale of the premises embraced in this mortgage, under the decree of any court having jurisdiction thereof, based upon the foreclosure of this mortgage, and the holders of a majority of the then outstanding bonds secured by this mortgage shall, in writing, request the said trustees, their or his survivors or survivor, successors or successor, they are, or he is, authorized to purchase the premises embraced herein, for the use and benefit of the holders of the then outstanding bonds secured by this mortgage.

And that, having so purchased said premises, the right and
239 title thereto shall vest in said trustee or trustees; and no bondholder shall have any claim to the premises, or to the proceeds thereof, except for his pro rata share of said purchased premises, as represented in a new company or corporation to be formed for the use and benefit of the holders of the bonds secured hereby. And that said trustees, or their successors or successor, survivors or survivor, may take such lawful measures as he or they may deem for the interest of said bondholders, to organize a new company or corporation for the benefit of the holders of the bonds secured by this mortgage; said new company or corporation shall be organized upon such terms, conditions, and limitations, and in such manner as the holders of a majority of said outstanding bonds, secured by this mortgage, shall in writing request or direct; and said trustees, so purchasing, shall thereupon reconvey the premises so purchased by him or them to said new company or corporation.

And it is further agreed, that the said trustees, his or their survivor, successors or successor, may appoint and employ, at the expense of the said trust-estate, all such attorneys, counsellors, clerks, book-keepers, engineers, or other agents, as may be reasonably necessary in the execution of any of the trusts herein or hereby declared, and shall not be answerable for the defaults or other misconduct or neglect of such attorneys, counsellors, clerks, book-keepers, engineers, or other agents, unless chargeable with culpable negligence in their selections; and further, that neither of said trustees shall be answerable for the acts, omissions, or defaults of his associate, nor shall either of them, or their survivor, successor or successors, be responsible for anything short of gross negligence, or wilful defaults in the discharge of his duties.

And it is further mutually agreed by all parties hereto, that said trustees, their or his successors or successor, survivors or survivor, shall

receive from said company for his or their services in the acceptance of this trust, and the signing and delivery of the bonds issued hereunder, each of them one bond of $1,000.

And for any further services hereunder, he or they shall receive as follows, viz: For services under any foreclosure proceedings to
240 foreclose this mortgage, the sum of one-fifth of one per centum on the par amount of the bonds to be secured by this mortgage, then outstanding, exclusive of all cash disbursements. For services in selling and conveying the lands herein described, and applying the proceeds to the sinking fund, as herein provided, the sum of two per centum on the par amount of the bonds cancelled in that manner, exclusive of all cash disbursements. The above commissions to be in full payment of both trustees, and to be equally divided between them.

And it is further mutually agreed, that said trustees, his or their successors or successor, survivors or survivor, may be removed from the office of trustees or trustee hereunder, by the vote of a majority in interest of the holders of said bonds, at any meeting called for that purpose.

And also, that said trustees or trustee, his or their successors or successor, survivors or survivor, may resign this trust, and be thereby discharged from future liabilities thereunder, by a notice of thirty days, in writing, to said company, or to its successors.

And it is further mutually agreed, that, in the case of the death, removal, resignation, incapacity, or inability of both or either of the said trustees to act in the execution of the trust hereby created, then a majority of the holders of said bonds may select and designate, in writing, one or more competent persons to fill the vacancy so occurring, in manner aforesaid. And until the bondholders make such selection, the remaining acting surviving trustee and president of the company are hereby empowered to select and appoint, by an instrument in writing, a competent person to fill the vacancy so created; and if there be no remaining or surviving trustee, then the president of the company, with the consent, in writing, of the owners or holders of said bonds to the amount of two hundred dollars, may select and appoint, as aforesaid, one or more persons to fill the vacancy, until the bondholders make an appointment of said trustee or trustees; and in either case the person or persons selected shall have and possess, and be vested with the same rights and powers as a trustee or trustees, as he or they would have had and possessed, or been vested with, had he or they been
241 originally made a party or parties to this indenture, and shall perform said duties in all respects; and until such appointments shall be so made in manner aforesaid, and notwithstanding any vacancy or vacancies, as aforesaid, said remaining surviving acting or competent trustee shall have full power and authority to execute each and all trusts hereby created. The said company, and their successors and assigns, hereby covenant to make, execute, and deliver all such other or further instruments, deeds, or indentures, as may be necessary to enable the person or persons so appointed to execute the trust hereby created, as fully and perfectly, in all respects, as he or they could have executed the same if originally a party to this indenture.

And it is further mutually agreed that, whenever and as often as any contingency shall arise, in which the action of a majority in interest of the holders of said bonds shall be necessary, or in which the said bondholders are herein declared to have any discretionary voice or power, it shall be the duty of said trustees, and each of them, and he or they are hereby authorized and required, to call a meeting of all the holders of the bonds secured by this mortgage, to be held in the city of New York, by

advertisements to be published at the expense of the said company, three times a week for six weeks, in at least two newspapers of large circulation amongst the business community in said city; and at such meeting, so convened, a majority in interest of the holders of said bonds, shall be competent to exercise, in person or by proxy, all the powers and authorites conferred upon them herein.

And any person appearing at said meeting of bondholders, and claiming the right to participate therein, shall, if requested by any bondholder present thereat, produce the bond or bonds upon which such person may claim the right to vote at such meeting, or file an affidavit with the chairman of such meeting that he, the person so claiming the right to participate in such meeting, is a holder of one or more of the bonds aforesaid, or the duly authorized proxy of such holder; in which affidavit he shall specify the amount and number of the bonds which he claims to hold or to represent, before being allowed to vote at
242 such meeting, except for the purpose of temporarily organizing the same; and, on the adjournment of such meeting, all such *such* affidavits shall be delivered to the railroad company, or its successors, to be filed among the records of said company.

And the said company, for themselves and their successors and assigns, hereby covenant and agree, for the consideration aforesaid, to execute and deliver any further reasonable and necessary deed or deeds, conveyance or conveyances, to the said trustees, their survivor, successor or successors, for the more fully securing the payment of said bonds, particularly for the conveyance of any right, interest, or property acquired by said company subsequent to the date hereof.

Provided always, and this grant and conveyance is upon the express condition that, upon the payment in full of said bonds, and the interest due thereon, or on the conversion thereof into the stock in manner named in said bonds, on exhibiting said bonds cancelled to the said trustees, his or their survivor, successors, or successor, then the estate, title, and interest of the said trustees, his or their survivor, successors or successor, shall cease, determine, and become void, and he or they shall, upon request of the company, or their successors, duly execute and deliver a proper release or satisfaction of this mortgage.

In witness whereof The Des Moines Valley Railroad Company have caused this indenture to be subscribed in its corporate name by its president and secretary, and have caused its corporate seal to be hereto affixed.

DES MOINES VALLEY RAILROAD COMPANY,

By , *President.*

[SEAL.] , *Secretary.*

In presence of—

243 STATE OF IOWA, *County of Lee, ss:*

Be it remembered that, on the day of October, 1868, before me, a notary public in and and for said State and county, came David W. Kilbourne and Arthur Bridgeman, who are personally known to me to be the identical persons whose names are affixed to the foregoing indenture as respectively president and secretary, and acknowledged the same to be the voluntary act and deed of said Des Moines Valley Railroad Company; and they each being by me duly sworn, deposes

and says, each for himself, that he, David W. Kilbourne, is president, and that he, Arthur Bridgeman, is secretary of said railroad company; that they signed the foregoing instrument as such president and secretary, and caused the corporate seal of said company to be affixed hereto, all as the act and deed of said company, by order and authority of said company, for the uses and purposes therein mentioned.

In testimony whereof I have hereunto set my hand and affixed my official notarial seal, the day and year above named.

Notary Public.

244 EXHIBIT XI.

List of actions commenced by Grantees of Des Moines Navigation and Railroad Company vs. Grantees of Dubuque and Sioux City Company, and against squatters upon the same.

Names of parties.	Description.	Section.	Township.	Range.	Acres.
W'm B. Welles vs. Michael Williams, grantee of Iowa Homestead Company.	N. E. S. E.	33	89	28	40
Roswell S. Burrows vs. Dan'l E. Stein and Jacob Crouse, grantees of I. H. Co.	N. W. fr. q't.	3	88	28	203. 21
W'm B. Welles vs. Norman Hart, do	S. E. N. W.	21	88	28	40
Edwin C. Litchfield vs. John Meany, do	N. E. N. E.	7	89	28	40
W'm J. McAlpine vs. John Meany, do	W. hf. S. W.	5	89	28	80
Richard B. Chapman vs. John Kemply, do., and squatter in part.	N. E.	5	88	28	
W'm B. Welles vs. Tho's Maher, do. and do	N. W. S. E and N. E. S. W.	33	89	28	
Edwin C. Litchfield vs. John P. McDermott, grantee Dubuque & Sioux City R. R. Co.	Lots 2, 3, & 4 of sec.	1	88	29	
W'm B. Welles vs. Michael Maher, grantee I. H. Co. in part and squatter in part.	S. hf. S. E.	33	89	28	80
Rich'd B. Chapman vs. Michael Gleason, grantee Iowa H. C.	S. W.	9	88	28	160
W'm B. Welles vs. John Kempley, do	N. E. N. W.	21	88	28	40
Edwin C. Litchfield vs. Bradford Kendall, do	Lots 5 & 6 & S. W. qr.	1	88	29	255
Samuel G Wolcott vs. Benjamin Townsend, do. (This is part of the tract upon which the U. S. Supreme Court decided in the Walcott case.)	N. E	17	88	27	160
Roswell S. Burrows vs. W. T. Woolsey, grantee I. H. Co.	N. W. N. E.	1	87	27	46
W'm B. Welles vs. Robert Wilgus, a squatter	S. E. N. E.	13	88	28	40
Albert H., Francis W., and Harriet F. Tracy vs. John Wilson, do.	S. W.	19	88	27	160
Richard B. Chapman vs. Tho's Cotter, do	S. E.	9	88	28	160
Roswell S. Burrows vs. John W. Ellis, W'm DeWitt, and Geo. W. Hudson, squatters.	S. hf. N. W. & N. hf. S. W.	35	88	27	160
245 Electus B. Litchfield vs. Isaac Crouse, squatter	S. E.	21	88	27	160
Edward Wade vs. Daniel Daniels, do	N. hf. S. E.	9	87	27	80
John Stryker vs. Patrick Mitchell, do	S. W.	19	90	28	160
W'm B. Welles vs. Henry Deering, Elizabeth S. Deering, and Horace Conlees, squatters.	N. W.	13	88	28	160
Roswell S. Burrows vs. Tho's Ellis, squatter	S. hf. S. E. & S. hf. S. W.	35	88	27	160
Roswell S. Burrows vs. Benj. Raynor and Mrs. John Bird, squatters.	N. E.	33	88	27	160
W'm B. Welles vs. John Crosby squatter	N. E. N. E.	13	88	28	40
John Stryker vs. Geo. C. Goss, do	W. hf. S. W. & N. E. S. W.	31	88	27	120
John Stryker vs. Peter Miller, do	S. hf. N. E.	29	89	28	80
W'm B. Welles vs. Geo. Goodchild, do	N. E.	1	88	28	160
W'm B. Welles vs. W'm Riley, do	N. E.	33	89	28	160
Robert B. Chapman vs. Martha Gaylor, do	N. W.	7	87	27	160
W'm B. Welles vs. J. C. Canfield, do	S. hf. N. E.	33	88	28	80
Des Moines Navigation and Railroad Company vs. Henry F. Barger, do.	Lot 1 of sec.	1	87	28	35
Des Moines Navigation and Railroad Company vs. Delia Humphreys, do.	Lots 6 & 7 & W. hf. S. W.	1	87	28	268
Roswell S. Burrows vs. Job Evans, do	N. E. N. W.	33	88	27	40
W'm B. Welles vs. Lucius W. Hart, do	W. hf. N. W. & N. W. S. W.	21	88	28	120
Richard B. Chapman vs. Tho's Collins, do	N. E.	17	88	28	160
Edward Wade vs. Susan M. Speer, do	S. W.	3	87	28	160
W'm B. Welles vs. Lewis Twining, do	S. E. S. E.	29	88	28	40
W'm B. Welles vs. Adolphus Snaer, do	S. W.	1	88	28	160
W'm B. Welles vs. Isaac Beech, do	N. E.	9	87	28	160

246 *List of suits in equity in State courts.*

			Sec.	T'p.	R.
	WEBSTER COUNTY.				
Equity..	Albert H. Tracey, Francis W. Tracey, and Harriet F. Tracey vs. John Wilson.	S. W	19	88	27
Equity..	Same vs. Michael Gleason	S. W	9	88	28
Equity..	Same vs. John Kempley	N. E	5	88	28
Equity..	Same vs. Martha Gaylor	N. W	7	87	27
Equity..	Same vs. Thomas Cotter	S. E	9	88	28
Equity..	Same vs. Thomas Collins	N. E	17	88	28
Equity..	Same vs. Susan M. Spear	S. W	3	87	28
Equity..	W'm J. McAlpine vs. John Meany	W. ½ W	5	89	28
Equity..	Samuel G. Wolcott vs. Benjamin Townsend	N. E	17	88	27
Equity..	William B. Welles vs. Michael Williams	N. E. S. E	33	89	28
Equity..	William B. Welles vs. Michael Maher	S. ½ S. E	33	89	28
247					
Equity..	Same vs. Thomas Maher	N. E. S. W., and N. W. S. E.	33	89	28
Equity..	William B. Welles vs. Robert Wilgus	S. E. N. E	13	88	28
Equity..	Same vs. John Crosby	N. E. N. E	13	88	28
Equity..	Same vs. Henry S. Deering, Elizabeth S. Deering, and Horace F. Conlee.	N. W	13	88	28
Equity..	Same vs. John Kempley	N. E. N. W	21	88	28
Equity..	Same vs. Norman Hart	S. E. N. W	21	88	28
Equity..	Same vs. George Goodchild	N. E	1	88	28
Equity..	William B. Welles vs. Adolphus Lehr	S. W	1	88	28
Equity..	Same vs. Lewis Twining	S. E. of S. E	29	88	28

248 EXHIBIT XII.

District court of Webster County, Iowa.

ELECTUS B. LITCHFIELD, PLAINTIFF,
vs.
ISAAC CROUSE, DEFENDANT. } Petition.

To the district court of Webster County, Iowa:

The petition of Electus B. Litchfield, the above-named plaintiff, respectfully shows to this court:

That plaintiff claims of and from the above-named defendant the immediate possession of the southeast quarter of section twenty-one, township eighty-eight north, of range twenty-seven west 5th p. m., Iowa, containing one hundred and sixty acres, more or less, situate, lying, and being in the said county of Webster, together with the hereditaments and appurtenances thereto belonging, and for cause of such claim state:

First. That plaintiff is the owner of and has the title in fee to the said above-described premises; that the defendant, before the commencement of this action, without authority and against the will and consent of your petitioner, entered into and upon the said tract of land, and now withholds the possession thereof from your petitioner, and unlawfully keeps him out of possession thereof, and that the damages to the petitioner by reason of such unlawful detention and withholding possession *in* the sum of one thousand dollars.

Second. And for a second and further cause of action your petitioner shows that he now is, and for several years last past has been, the owner of and had and held the title to the southeast quarter of section
249 21, township 88, range 27 west 5th p. m., Iowa, the same being the land hereinbefore described, with the hereditaments and appurtenances; that for and during five years last past, the said de-

fendant has used, occupied, and enjoyed the said premises, and had and received the profits and benefits arising from such use and occupation; that the reasonable worth and value of such use and occupation by the defendant during the period aforesaid is two thousand dollars, which sum your petitioner claims that he is entitled to have and receive of the said defendant in the premises.

Wherefore, by reason of the said premises aforesaid, your petitioner claims the immediate possession of the said premises, in the first count herein described, and judgment against the defendant for the sum of one thousand dollars in the said court herein claimed, and two thousand dollars for the use and occupation of the premises in the second count above-described, and together with the costs of this action.

FINCH & RIVERS,
Attorneys for Plaintiff.

(Indorsement:) In the district court of Webster County. Electus B. Litchfield vs. Isaac Crouse. Petiton at law. Filed August 21, 1858. W. Lumpkin, clerk. Filing fees paid by Finch & Rivers, attorneys for plaintiff.

250 EXHIBIT XIII.

CHAPTER 57.—*Des Valley Railroad and lands.*

An act prescribing the terms and conditions on which the State will relinquish and convey to The Des Moines Valley Railroad Company certain rights and privileges in respect to the resumption of lands heretofore granted to said company.

Whereas, by an act of Congress approved August 8, 1846, there was granted to the then Territory of Iowa certain lands to aid in the improvement of the Des Moines River, in said Territory, which grant the State of Iowa, by joint resolution of the general assembly, approved January 9, 1847, accepted for the purposes therein specified; and

Whereas the general assembly of the State, by an act approved March 22, 1858, granted such portion of said lands as had not been previously disposed of, to the Keokuk, Fort Des Moines and Minnesota Railroad Company, to aid in the construction of a railroad from the city of Keokuk up and along the valley of the Des Moines River by the way of the city of Des Moines to the northern line of the State, in the direction of the southern bend of the Minnesota or St. Peter's River, and providing that said grant should become operative when the consent of Congress to the diversion of said lands should be obtained, or the title thereto vested in the State; and also imposing upon said company, in case of its acceptance of said grant, certain conditions and restrictions, among which it was provided that said company would complete seventy-five miles of said road within three years, and thirty-three miles each year thereafter for five years, and the whole line on or before the first day of December, 1868; and

Whereas such consent of Congress to the diversion was given by an act approved July 12, 1862, and said company afterwards accepted said grant; and

251 Whereas said Keokuk, Fort Des Moines and Minnesota Railroad Company is now known as and called The Des Moines *Moines* Valley Railroad Company; and

Whereas said railroad [company] is in default in respect to the time of construction of said road, and in the performance of other conditions

practicable, and prior to the
embraced in the said act of
ing the lands reserved and de
hundred thousand acres of s
ticable, and embracing the
lands so selected, as well as
sold, shall be held and applie
railroad above Des Moines, a
veyed and patented to said ra
sons as they shall dire
253 road into the town of
the Des Moines River, a
agrees to do; and the evidenc
of trains into said town wit
lands shall be patented until
portion thereof sold under
same paid over to said ra
pany shall also have not less
their present terminus grade
endar year.

Fifth. That so soon as satis
Governor that all the claims
paid, or fully discharged, w
ments made by said railroad
The Des Moines Valley Ra
deed or deeds in the name
for all the lands embraced
July 12, 1862, save and exce
before reserved for the constr
Moines to Fort Dodge; and
grant which may have been
the State of Iowa for the pr
claiming homesteads thereo
June 20th, 1866, by the cens
Des Moines Valley Railroad
United States therein referred

SEC. 2. In case of non-com
foregoing conditions by it to
tion, this act shall have the fo
all rights of said company in
tofore or hereby granted to s
failure actually conveyed by
feited and revested to the
thereof had never been

254 SEC. 3. This act sha
pany, and evidenced
retary of said company, with
days from the approval of th
Des Moines Valley Railroad
the foregoing provisions ther
effect as if the same had b
pany accepting the provisions
such rules, regulations, and
and passengers as may from
assembly of the State of Iow

SEC. 4. So much of section

ave effect from and after its

Evening Statesman, papers

t was published in the Iowa
the Daily State Register,

ED. WRIGHT,
Secretary of State.

ND OFFICE, *Oct.* 17, 1846.

ngress approved 8th August,
ds to the Territory of Iowa,
on of the Des Moines River
re be, and hereby is, granted
of aiding said Territory to
River from its mouth to the
one equal moiety in alternate
unsold and not otherwise
in a strip five miles in width
within said Territory by an
ernor thereof, subject to the
of the United States."
d to the vacant lands in the
ach side of the Des Moines
oundary of Missouri, to the

The act authorizes the selec-
ppointed by you, but as the
unsold and unappropriated,
r the law, is for you to deter-
e sections having even num-
dd numbers, as 1, 3, 5, &c.
most advantageous to the
mbers you would be deprived
p, which, as you are aware, is
s grant, the boundary being
and the school lands brown.
f all the sections, or parts of
odd numbers in one column,
n you have determined the
land officers at Fairfield and
withhold from sale or entry of
ed land in the sections you

fendant has used, occupied, and enjoyed the said premises, and had and received the profits and benefits arising from such use and occupation; that the reasonable worth and value of such use and occupation by the defendant during the period aforesaid is two thousand dollars, which sum your petitioner claims that he is entitled to have and receive of the said defendant in the premises.

Wherefore, by reason of the said premises aforesaid, your petitioner claims the immediate possession of the said premises, in the first count herein described, and judgment against the defendant for the sum of one thousand dollars in the said court herein claimed, and two thousand dollars for the use and occupation of the premises in the second count above-described, and together with the costs of this action.

FINCH & RIVERS,
Attorneys for Plaintiff.

(Indorsement:) In the district court of Webster County. Electus B. Litchfield vs. Isaac Crouse. Petiton at law. Filed August 21, 1858. W. Lumpkin, clerk. Filing fees paid by Finch & Rivers, attorneys for plaintiff.

250 EXHIBIT XIII.

CHAPTER 57.—*Des Valley Railroad and lands.*

An act prescribing the terms and conditions on which the State will relinquish and convey to The Des Moines Valley Railroad Company certain rights and privileges in respect to the resumption of lands heretofore granted to said company.

Whereas, by an act of Congress approved August 8, 1846, there was granted to the then Territory of Iowa certain lands to aid in the improvement of the Des Moines River, in said Territory, which grant the State of Iowa, by joint resolution of the general assembly, approved January 9, 1847, accepted for the purposes therein specified; and

Whereas the general assembly of the State, by an act approved March 22, 1858, granted such portion of said lands as had not been previously disposed of, to the Keokuk, Fort Des Moines and Minnesota Railroad Company, to aid in the construction of a railroad from the city of Keokuk up and along the valley of the Des Moines River by the way of the city of Des Moines to the northern line of the State, in the direction of the southern bend of the Minnesota or St. Peter's River, and providing that said grant should become operative when the consent of Congress to the diversion of said lands should be obtained, or the title thereto vested in the State; and also imposing upon said company, in case of its acceptance of said grant, certain conditions and restrictions, among which it was provided that said company would complete seventy-five miles of said road within three years, and thirty-three miles each year thereafter for five years, and the whole line on or before the first day of December, 1868; and

Whereas such consent of Congress to the diversion was given by an act approved July 12, 1862, and said company afterwards accepted said grant; and

251 Whereas said Keokuk, Fort Des Moines and Minnesota Railroad Company is now known as and called The Des Moines *Moines* Valley Railroad Company; and

Whereas said railroad [company] is in default in respect to the time of construction of said road, and in the performance of other conditions

of said grant, whereby the State has the right to resume the whole or a part of said lands; therefore—

SECTION 1. *Be it enacted by the general assembly of the State of Iowa*, That the reserved rights and interests of the State in respect to the resumption and disposal of said lands are hereby relinquished to and conferred upon said Des Moines Valley Railroad Company, in the manner and upon the performance of the conditions precedent by said company, as hereinafter set forth, and not otherwise, viz:

First. That it shall be the duty of the register of the State land office, as soon as practicable, and before the first day of July, 1868, to set apart and reserve from the remaining river lands within the grant, and lying in place next north of township number ninety, and upon which there are no settlers claiming homestead rights, and exclusive, also, of the ten sections set apart and sold to S. H. Taft, one hundred thousand acres of said lands, which shall be especially held to secure the payment of the claims described in sections 1 and 2 of chapter 22 of the Laws of the Eleventh General Assembly of Iowa, and also of such claims as have been or may be allowed by the present general assembly.

Second. That if the said Des Moines Valley Railroad Company shall fail to pay in full and discharge all the claims in the preceding paragraph mentioned, by or before the first day of July next, then it shall be the duty of the register of the State land office, and he is hereby requ'red, to proceed immediately to sell, at his office in Des Moines, for cash, to the highest bidder, for not less than one dollar and fifty cents per acre, all the lands reserved by the preceding paragraph, or so much thereof as shall produce the amount of money remaining due and unpaid on such claim: *Provided*, that he shall first advertise the sale of such lands for not less than sixty days in four different newspapers published, one in Springvale, one in Fort Dodge, one in Des
252 Moines, and one in Keokuk, Iowa: *And provided further*, that such lands shall be sold by him in quantities not less than forty acres nor more than one hundred and sixty acres each, and that the warrants issued by the State auditor on account of the claims aforesaid, shall be received as cash in payment of lands bought at such sale: *And provided further*, that said company shall have the right to pay said claims at any time before such sale of the lands.

Third. That, upon such sale and payment of the purchase-money, the register shall issue a certificate to the purchaser, showing the land purchased by him and the amount paid therefor; and upon the presentation thereof to the governor, he shall execute to the purchaser a deed in the name of the State of Iowa, without warranty, conveying the lands so purchased, which deed shall be effectual to pass all the right and title thereto now held by the State, or which may hereafter be acquired by the State from the United States; and all moneys, the proceeds of the sales of lands as aforesaid, shall be by the register paid into the State treasury, for the use of the holders of the unpaid claims herein provided for, which shall be paid in the order specified in section 1 of chapter 22 of the Laws of the Eleventh General Assembly, upon the production and surrender of the warrants therefor; and if there should be an amount insufficient to pay the same in full, then the same shall be paid pro rata; and if there shall remain a balance after paying the same in full, such balance shall be paid over to said Railroad Company.

Fourth. That the register of the State land office shall, as soon as

fendant has used, occupied, and enjoyed the said premises, and had and received the profits and benefits arising from such use and occupation; that the reasonable worth and value of such use and occupation by the defendant during the period aforesaid is two thousand dollars, which sum your petitioner claims that he is entitled to have and receive of the said defendant in the premises.

Wherefore, by reason of the said premises aforesaid, your petitioner claims the immediate possession of the said premises, in the first count herein described, and judgment against the defendant for the sum of one thousand dollars in the said court herein claimed, and two thousand dollars for the use and occupation of the premises in the second count above-described, and together with the costs of this action.

FINCH & RIVERS,
Attorneys for Plaintiff.

(Indorsement:) In the district court of Webster County. Electus B. Litchfield vs. Isaac Crouse. Petiton at law. Filed August 21, 1858. W. Lumpkin, clerk. Filing fees paid by Finch & Rivers, attorneys for plaintiff.

250 EXHIBIT XIII.

CHAPTER 57.—*Des Valley Railroad and lands.*

An act prescribing the terms and conditions on which the State will relinquish and convey to The Des Moines Valley Railroad Company certain rights and privileges in respect to the resumption of lands heretofore granted to said company.

Whereas, by an act of Congress approved August 8, 1846, there was granted to the then Territory of Iowa certain lands to aid in the improvement of the Des Moines River, in said Territory, which grant the State of Iowa, by joint resolution of the general assembly, approved January 9, 1847, accepted for the purposes therein specified; and

Whereas the general assembly of the State, by an act approved March 22, 1858, granted such portion of said lands as had not been previously disposed of, to the Keokuk, Fort Des Moines and Minnesota Railroad Company, to aid in the construction of a railroad from the city of Keokuk up and along the valley of the Des Moines River by the way of the city of Des Moines to the northern line of the State, in the direction of the southern bend of the Minnesota or St. Peter's River, and providing that said grant should become operative when the consent of Congress to the diversion of said lands should be obtained, or the title thereto vested in the State; and also imposing upon said company, in case of its acceptance of said grant, certain conditions and restrictions, among which it was provided that said company would complete seventy-five miles of said road within three years, and thirty-three miles each year thereafter for five years, and the whole line on or before the first day of December, 1868; and

Whereas such consent of Congress to the diversion was given by an act approved July 12, 1862, and said company afterwards accepted said grant; and

251 Whereas said Keokuk, Fort Des Moines and Minnesota Railroad Company is now known as and called The Des Moines *Moines* Valley Railroad Company; and

Whereas said railroad [company] is in default in respect to the time of construction of said road, and in the performance of other conditions

of said grant, whereby the State has the right to resume the whole or a part of said lands; therefore—

SECTION 1. *Be it enacted by the general assembly of the State of Iowa*, That the reserved rights and interests of the State in respect to the resumption and disposal of said lands are hereby relinquished to and conferred upon said Des Moines Valley Railroad Company, in the manner and upon the performance of the conditions precedent by said company, as hereinafter set forth, and not otherwise, viz:

First. That it shall be the duty of the register of the State land office, as soon as practicable, and before the first day of July, 1868, to set apart and reserve from the remaining river lands within the grant, and lying in place next north of township number ninety, and upon which there are no settlers claiming homestead rights, and exclusive, also, of the ten sections set apart and sold to S. H. Taft, one hundred thousand acres of said lands, which shall be especially held to secure the payment of the claims described in sections 1 and 2 of chapter 22 of the Laws of the Eleventh General Assembly of Iowa, and also of such claims as have been or may be allowed by the present general assembly.

Second. That if the said Des Moines Valley Railroad Company shall fail to pay in full and discharge all the claims in the preceding paragraph mentioned, by or before the first day of July next, then it shall be the duty of the register of the State land office, and he is hereby requ'red, to proceed immediately to sell, at his office in Des Moines, for cash, to the highest bidder, for not less than one dollar and fifty cents per acre, all the lands reserved by the preceding paragraph, or so much thereof as shall produce the amount of money remaining due and unpaid on such claim: *Provided*, that he shall first advertise the sale of such lands for not less than sixty days in four different newspapers published, one in Springvale, one in Fort Dodge, one in Des
252 Moines, and one in Keokuk, Iowa: *And provided further*, that such lands shall be sold by him in quantities not less than forty acres nor more than one hundred and sixty acres each, and that the warrants issued by the State auditor on account of the claims aforesaid, shall be received as cash in payment of lands bought at such sale: *And provided further*, that said company shall have the right to pay said claims at any time before such sale of the lands.

Third. That, upon such sale and payment of the purchase-money, the register shall issue a certificate to the purchaser, showing the land purchased by him and the amount paid therefor; and upon the presentation thereof to the governor, he shall execute to the purchaser a deed in the name of the State of Iowa, without warranty, conveying the lands so purchased, which deed shall be effectual to pass all the right and title thereto now held by the State, or which may hereafter be acquired by the State from the United States; and all moneys, the proceeds of the sales of lands as aforesaid, shall be by the register paid into the State treasury, for the use of the holders of the unpaid claims herein provided for, which shall be paid in the order specified in section 1 of chapter 22 of the Laws of the Eleventh General Assembly, upon the production and surrender of the warrants therefor; and if there should be an amount insufficient to pay the same in full, then the same shall be paid pro rata; and if there shall remain a balance after paying the same in full, such balance shall be paid over to said Railroad Company.

Fourth. That the register of the State land office shall, as soon as

practicable, and prior to the first day of July next, select from the lands embraced in the said act of Congress, approved July 12, 1862, excluding the lands reserved and described in the first paragraph hereof, one hundred thousand acres of said land, of average value as near as practicable, and embracing the ten sections sold to S. H. Taft; and the lands so selected, as well as the proceeds of any portion thereof now sold, shall be held and applied exclusively for the construction of said railroad above Des Moines, as now provided by law, and shall be conveyed and patented to said railroad company, or to such person or persons as they shall direct, only upon the completion of said rail-
253 road into the town of Fort Dodge, situated on the east side of the Des Moines River, within the year 1870, which said company agrees to do; and the evidence of such completion shall be the running of trains into said town within the time specified, and none of said lands shall be patented until such completion, and the proceeds of any portion thereof sold under provisions of existing law shall be at the same paid over to said railroad company. The said railroad company shall also have not less than sixty-five miles of said road from their present terminus graded during the present and the ensuing calendar year.

Fifth. That so soon as satisfactory evidence shall be furnished to the Governor that all the claims herein provided for have been settled and paid, or fully discharged, whether by the sale of the land, or by payments made by said railroad company, he shall execute and deliver to The Des Moines Valley Railroad Company, or to their assigns, a deed or deeds in the name of the State of Iowa, without warranty, for all the lands embraced in the said act of Congress, approved July 12, 1862, save and except the one hundred thousand acres hereinbefore reserved for the construction of said road above the city of Des Moines to Fort Dodge; and except, also, any lands embraced in said grant which may have been reserved by any act passed prior hereto by the State of Iowa for the protection or benefit of settlers or persons claiming homesteads thereon; and the settlement made and approved June 20th, 1866, by the census board of the State of Iowa with The Des Moines Valley Railroad Company, and the settlement with the United States therein referred to, are hereby ratified and confirmed.

SEC. 2. In case of non-compliance by said railroad company with the foregoing conditions by it to be performed, then, without further legislation, this act shall have the force and effect of an act of resumption, and all rights of said company in and to said lands or any part thereof, heretofore or hereby granted to said company, and not at the time of such failure actually conveyed by the State to said company, shall be forfeited and revested to the State of Iowa, as full [y] as if the grant thereof had never been made by the State.

254 SEC. 3. This act shall be accepted by the said railroad company, and evidenced by the signature of the president and secretary of said company, with the corporate seal thereof, within thirty days from the approval of this act, but the non-acceptance by the said Des Moines Valley Railroad Company of this act shall not prevent all the foregoing provisions thereof from having the same operation and effect as if the same had been accepted by said company. The company accepting the provisions of this act shall at all times be subject to such rules, regulations, and rates of tariff for transportation of freight and passengers as may from time to time be enacted by the general assembly of the State of Iowa.

SEC. 4. So much of section three of chapter one hundred and eight, of

the Laws of the Tenth General Assembly, and of other laws and provisions relating thereto, including section five of said chapter, as requires the lands hereinbefore referred to, or any part thereof, to be classified or graded by commissioners, and all other acts and parts of acts inconsistent with this act, are hereby repealed.

SEC. 5. This act shall be in force and have effect from and after its publication in the State Register and Evening Statesman, papers published in Des Moines, Iowa.

Approved March 31, 1868.

I hereby certify that the foregoing act was published in the Iowa Evening Statesman, April 1, 1868, and in the Daily State Register, April 2, 1868.

ED. WRIGHT,
Secretary of State.

255 EXHIBIT XIV.

GENERAL LAND OFFICE, *Oct.* 17, 1846.

His excellency JAMES CLARK,
Governor of Iowa, Iowa City.

SIR: By the first section of the act of Congress approved 8th August, 1846, entitled "An act granting certain lands to the Territory of Iowa, to aid in the improvement of the navigation of the Des Moines River in said Territory," it is enacted "that there be, and hereby is, granted to the Territory of Iowa, for the purpose of aiding said Territory to improve the navigation of the Des Moines River from its mouth to the Raccoon Fork (so called) in said Territory, one equal moiety in alternate sections of the public lands (remaining unsold and not otherwise disposed of, encumbered or appropriated) in a strip five miles in width on each side of said river, to be selected within said Territory by an agent or agents to be appointed by the governor thereof, subject to the approval of the Secretary of the Treasury of the United States."

Under this grant the Territory is entitled to the vacant lands in the alternate sections within five miles on each side of the Des Moines River from Sullivan's line, the northern boundary of Missouri, to the Raccoon Fork of the Des Moines River. The act authorizes the selections to be made by an agent or agents appointed by you, but as the grant is limited to one equal moiety of the unsold and unappropriated, &c., to be taken in alternate sections, the only selection which appears to be required, or which can be made under the law, is for you to determine whether you will take the lands in the sections having even numbers, as 2, 4, 6, &c., or those that have odd numbers, as 1, 3, 5, &c. The odd numbers would probably be the most advantageous to the
Territory, as in selecting the even numbers you would be deprived
256 of the 16th section in each township, which, as you are aware, is
reserved for schools.

Enclosed I send you a diagram of this grant, the boundary being colored pink, the alternate sections blue, and the school lands brown. I also enclose you a list showing the areas of all the sections, or parts of sections, within this grant, those having odd numbers in one column, and the even numbers in another. When you have determined the sections you will select, please advise the land officers at Fairfield and Iowa City, who have been instructed to withhold from sale or entry of any kind all the vacant and unappropriated land in the sections you

may select. Please also advise this office, return the list and diagram, and a list of the vacant lands in the sections selected will be immediately prepared, submitted to the Secretary of the Treasury for his approval, as required by the law, and when approved will be certified to you.

With great respect, your obedient servant,

JAMES H. PIPER,
Acting Commissioner.

257 EXHIBIT XV.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE, *January* 8, 1869.

I, Joseph S. Wilson, Commissioner of the General Land Office, do hereby certify that the annexed copies are a true and literal exemplification of the originals on file in this office.

In testimony whereof I have hereunto subscribed my name, and caused the seal of this office to be affixed, at the city of Washington on the day and year above written.

[L. S.] (Signed) JOSEPH S. WILSON,
Commissioner of the General Land Office.

GENERAL LAND OFFICE, *June* 7, 1860.

Hon. J. THOMPSON,
Secretary Interior.

SIR: I have the honor to return herewith:

1st. Letter dated May 28th, 1860, from the chairman of the Committee on Public Lands of the Senate, enclosing petitions of citizens of Iowa.

2nd. Letter dated May 30th, 1860, from the same enclosing S. R. No. 37.

3d. Letter dated June 1st, 1860, from the same, enclosing petitions of the president and secretary of the Dubuque and Pacific Railroad Company.

These refer to the lands which have been heretofore certified above the Raccoon Fork to the State of Iowa, under the Des Moines improvement grant, act of August 8th, 1846, the claim of the State to which falls to the ground under the recent decision of the Supreme Court of the United States, and pursuant to your reference, respectfully submit the enclosed bill, which was presented for your consideration, with the letters dated May 3d and 14th last, from this office upon that subject. In connection with the matter, I also enclose for your consideration copy marked "A" of letter dated June 1st, 1860, from W. T. Steiger, esq,

Copy marked B, of letter, no date, received 2d inst., from Charles Mason, esq.

258 Copy, marked C, of letter dated June 6th, 1860, from W. T. Steiger, esq.

Very respectfully your ob't serv't,

JOS. S. WILSON, *Commissioner.*

WASHINGTON, *June 1st*, 1860.

Hon. JOSEPH S. WILSON,
Commis'r Gen'l Land Office.

SIR: Having been informed that the resolution introduced in the

Senate by the Hon. Mr. Grimes, of Iowa, for confirming sales made by the State of certain lands on and near the Des Moines River and for other purposes, S. R. No. 37, has just been referred by the Committee on Public Lands of the Senate to the Secretary of the Interior for his views, and is now before you for report—

I respectfully ask, in behalf of the railroad companies, that the enclosed printed copy of the decision of the Supreme Court referred to in the resolution, may be communicated to the committee; also that the companies may have the benefit of the facts, that the lands in question were by agreement, in adjusting the railroad grants at your office, placed in suspension, to await the decision of the courts, and that since the decision of the Supreme Court was rendered, they have been claimed and selected for the railroads, and particular lists and maps thereof filed by me as their agent, in the General Land Office.

I am very respectfully your obedient servant,

W'M T. STEIGER, *Agent*, &c.

Hon. JOSEPH S. WILSON.

SIR: By your permission I present the following points in relation to the question of relief to purchasers of Des Moines River Lands:

The Supreme Court founded its late decision on the grounds, 1st. That the grant originally extended no higher than the Ra'coon Fork; and, 2nd, that Mr. Walker in deciding differently, and Mr. Stuart and McClelland in certifying the lands above that point, acted without authority of law; that their acts did not, therefore, bind the Government, and that, though the lands had been certified to the State, yet the title did not pass, but remained still in the United States, or passed by subsequent grant to the railroads.

259 It should be remembered that the Des Moines River grant was not a mere gratuity. It was, in fact, a proposition made which required the acceptance of the State before it took effect; certain conditions were prescribed to which the assent of the State was requisite. The proceeds of the lands were to be devoted to the improvement of the Des Moines River, which was thenceforward to remain forever a "public highway for the use of the Government of the United States, free from any toll or other charge for any property of the United States or persons in their service, passing through or along the same." Such a grant is not a donation, but, when accepted, is a sale. A full consideration is paid by the grantee, and so it was held by Mr. Walker, in his letter to Acting Commissioner Piper, of December 11th, 1846; and that ruling of his has never been reversed.

It does not follow that a corresponding benefit must result to the grantor in order to constitute a sufficient consideration for such a grant. An inconvenience to the grantee is just as good a consideration as a benefit to the grantor. If I agree to give a man a hundred acres of land, provided he will lie in bed for a year, it is a good consideration. When he has performed that condition, he can demand the performance of the contract on my part. The transaction amounts to a sale of the land for a valuable consideration.

But in the present case there was to be a benefit conferred upon the United States. It was not merely from the fact that Iowa had done something, and engaged to do more, that this consideration is deduced, but an essential benefit was to result to the other party.

The United States said to the State of Iowa, We will grant you this land, provided you will improve the Des Moines River and give us the

free use of the same in its improved condition forever—just as any other proprietor might agree to give a portion of his property for the construction of a public highway that would render the remainder more valuable.

Now, we have performed our part of this agreement, as far as performance was to be made, up to the present time. We have, therefore, purchased the land, and made partial payment for the same, and we are ready to complete the payment when the proper time shall arrive.

The act of August 8th, 1846, declares that the land shall be selected subject to the approval of the Secretary of the Treasury. That officer was to decide what land was properly selected under that grant.
260 He decided that the grant extended to the source of the river, and the selection was made accordingly. The case is precisely the same as if the selection had first been made by the agents of the State, and afterwards approved by the Secretary.

In pursuance of this decision of the Secretary, some 270,000 acres of land lying above the Raccoon Fork was subsequently certified to the State by the proper officers. It was received by the State as a portion of this grant.

It was sold to bona-fide purchasers, and the proceeds were applied to the improvement of the Des Moines River The State had every reason to believe that the contract with the United States had been correctly expounded by the proper officers of that Government, and it made its plans accordingly. It commenced the improvement of its most important internal river on a scale different from what it would otherwise have done, and which it cannot complete unless the contract is carried out by the United States.

The navigation of that river, instead of being improved, is now nearly ruined, and by no fault of hers. It is filled with half-finished works, in the shape of masses of timber and rocks—just enough to obstruct the navigation of the stream without being of any service whatever. If loss is to be sustained by some one in consequence of the error of public officers, what is more reasonable than that the Government by which they were appointed and trusted should sustain that loss? Had their acts been so clearly wrongful as to render it manifest that they had exceeded their power, the case would have been different. Collusion and fraud would then have been presumed on the part of the State, and of these it would be but just that she should reap the consequences.

But nothing of this nature is pretended. The extraordinary vascillations which have taken place in the decision of the different public functionaries attest this truth sufficiently, even if it were not evident from the language of the law itself. Besides, that the true construction of this law is a matter of doubt, is broadly admitted on all hands, and by none more unequivocally than by the present Attorney General and his immediate predecessor.

In cases of doubt in the construction of a grant, on whom are we to rely for information, if not on the head of the proper Department of the Government? And when, in accordance with the decision of that officer, individuals have obtained their titles to lands; when they have converted them into fruitful farms and thriving villages, should
261 not the proprietors of those farms feel safe in their possessions? Should they be left to tremble for years lest these homesteads should pass by some subsequent railroad grant, or be entered at the land office, or that they should be required to purchase their property anew from the United States?

The persons who held land along the Des Moines Valley under State

patents to lands certified by the Secretary of the Interior, felt as safe in their titles as any landholders in this country. And they had full right to do so, for in addition to the consideration above expressed, they had the unqualified opinion of Mr. Cushing in their favor. They had the letter of Mr. McClelland, of November 10th, 1856, concurring in that opinion, and declaring, in express terms, that the acts done by the Department, so far as the lands had been certified, had completely divested the United States of their title, and transferred it to the State and its grantees.

I do not forget that the Supreme Court have decided that the strict law of this case differs from these views. But I am not now discussing a question of legal liability, but one of broad equity. The matter is now before a body which may not be disposed to avail themselves of their strict legal rights, when satisfied that this cannot be done honorably and justly. A few years since Robert Schuyler was the authorized agent of certain railroad companies to issue and dispose of their stock to a certain limited amount. He issued and sold more than he had any authority to do. Had he been acting in good faith, and had exceeded his power merely from a misconstruction of his proper power, the case would have been parallel to this. That his acts were fraudulent as well as erroneous did not certainly render them any more binding upon the companies for which he was acting. Under these circumstances, the companies refused to recognize their obligations for his acts. I am not certain as to whether the question as to their legal liability has ever yet been determined by the highest tribunals, but I do feel certain that, if the matter had been brought before the Supreme Court of the United States, and they had followed the rule adopted by them in the Des Moines River case, they would have held that the acts of this agent having been beyond the scope of his authority, were null and void, and the holders of the stock so issued were without remedy.

Now, suppose just such a decision to have been made, would not every right-minded man say that the companies, though legally exonerated, were still morally bound to save innocent persons harmless; that
262 for the wrongful act of an agent, the principal should suffer, rather than a third party, to whom he had been held forth by that principal as worthy of confidence? Can the United States repudiate the act of a Secretary of the Treasury or of the nation with any better grace than a railroad company could do that of its executive officer? Such an act would serve as a most pernicious example, and in the present condition of some portions of the country, would be followed by many who would rejoice in such a precedent.

In many of the States, bonds to a large amount have been issued by cities and counties for various purposes. If the rule were to be observed, that when these bonds had not been issued in strict accordance with law, there was no legal or moral obligation to pay them, very few of the number would ever be held valid.

In my own State I know of millions of dollars which will be wholly lost to the bondholders if repudiation there is to be tolerated on the same grounds that must be resorted to by the United States in order to avoid liability for the acts and decisions of the heads of Departments.

Few, if any of these bonds, have ever been executed in strict accordance with law, and if a judicial decision of irregularity shall, by the example of the United States, be made a reputable mode of avoiding responsibility, our erroneous western corporate indebtedness will soon be wiped out of existence.

With regard to county bonds in particular, I never doubted that they

were issued without legal authority. At the time this was done, every one was running wild with the excitement of speculation and railroad building. The supreme court of the State so far felt the influence of this popular impulse, that two of the three judges held these bonds legal. With a change in the times and in the public sentiment, has come an entire change in members of the court. Every one of the present judges is of the opinion that these bonds were illegally issued in the first instance, and the only question now is, whether they shall be held invalid absolutely, or whether, having been sold and gone into the hands of bona fide purchasers, they shall not be held valid, and the counties be made to suffer the consequences of the acts of their agents, however wrongful or illegal they may have been.

The last I knew of the action of the court, that question seemed still in suspense. Public sentiment seemed to be generally in favor of payment.

263 The same district court of the United States which has in the Des Moines River case, held that the Government was bound by the acts of the heads of Departments, has also decided that the counties should pay the bonds which had gone into the hands of innocent purchasers; but the court, at the same time, intimated an opinion that as a question of new impression such bonds would have *have* been held invalid.

The question will probably come to the Supreme Court of the United States. If they follow the rule recently laid down by themselves, they will hold the bonds invalid, and then will come the question whether the moral sense of the people will be sufficient to induce them to make a payment which cannot be enforced. The example set by the United States will very probably be followed, for men are but too apt to follow a precedent which promotes their self-interest. I speak of the conditions of things in Iowa, as I am there best acquainted; but I doubt not a similar condition of things exist' elsewhere. The mine is prepared, and needs but the sparks to cause the explosion. An example set by the United States will be sufficient for this purpose, and a general scene of repudiation will very probably spread over the deeply indebted cities and counties of the West.

My belief is that the United States can neither with honor nor safety repudiate the acts of their accredited agents, even if they have so far exceeded their power as to render those acts illegal; that, as far as they now have it in their power, they should not only hold harmless all innocent purchasers of property transferred by those heads of Departments, but that in all respects they should carry out toward the State the same rule of action that would have been followed had all the different secretaries been acting within the scope of their legitimate authority in all that they have done; at least to the extent that the State shall suffer no detriment from their erroneous or wrongful acts.

The joint resolution now under consideration will, if adopted, produce that result in part, and I trust it will secure the sanction of the Department. Such an example will not be without its effect; and finally, should the worst happen, public honor requires that the first great impulse toward repudiation should not have been given by that Government around which our hopes and our affections so earnestly cling.

In order to make the arrangement entirely efficacious, by securing the acquiescence of the railroad companies, I would respectfully sug-

264 gest such an amendment of the joint resolution as to allow the selection of the even-numbered sections along the line of the respective railroads in lieu of any of the odd-numbered sections held

by any of these railroads under the grant of 1856, which had been previously certified to the State, and sold by it to bona fide purchasers. This would doubtless enable us to make such arrangements as would deprive no one of the property he had honestly purchased.

Respectfully, yours,

CHARLES MASON.

WASHINGTON, *June 6th*, 1860.

Hon. JOSEPH S. WILSON,
Commiss'r Gen'l Land Office.

SIR: In behalf of the Iowa railroads, permit me to reply to the argument of Charles Mason, esq., filed in the case of The Des Moines River Improvement Lands, in Iowa, to call your attention, and, through you, that of the Department and the committee of Congress, to the simple fact that long before the certification of any lists of lands above Rac'oon Fork the State was repeatedly notified by the Department that her claim to those lands under the act of Congress and the decision of Secretary Walker of 2nd March, 1849, was illegal and untenable.

That the first notice was contained in the decision of Secretary Ewing, bearing date the 6th of April, 1850, in which he held that the grant did not go above the Rac'oon Fork, and refused to approve lists. That the State authorities were again notified in the decision of Secretary Stuart of 26th July, 1851, fully concurring in the view of Mr. Ewing; and finally, that, in certifying the first list on the 30th October, 1851, as was done in all the lists subsequently approved to the State, upon which it is claimed that the State based her sales, notice was given on their face that the approval was made subject to the decision of the courts, and subject to any valid interfering rights, and that the State and the public had notice besides through large masses of official correspondence up to the present time.

Hence it is a fact that the State and her purchasers, and assigns, had ample notice.

They were not, therefore, innocent purchasers without notice,
265 and it follows, I think, that the whole argument and appeal of Mr. Mason, resting as it does upon this ground, is inapplicable to the case.

I am, very respectfully, your obedient servant,

W'M T. STEIGER, *Agent, &c.*

P. S. I enclose duplicate of the above to save copying.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., Dec. 29, 1868.

I, Orville H. Browning, Secretary of the Interior, do hereby certify that the annexed are true copies from the records of this Department.

In testimony whereof I have hereunto subscribed my name and caused the seal of the Department to be affixed the day and year above written.

[L. S.] (Signed) O. H. BROWNING,
Secretary of the Interior.

DEPARTMENT OF THE INTERIOR, *June* 11, 1860.

SIR: Herewith I have the honor to transmit a copy of the report of the Commissioner of the General Land Office of the 7th inst., upon Senate joint resolution No. 37, and the memorial relative to certain tracts of land heretofore certified to the State of Iowa, as part of the

grant made to said State by the act of Congress of 8th August, 1846, and to return all the papers submitted with your several letters of the 28th and 30th ultimo, and the 1st instant.

The Commissioner has sent with his report copies of two letters addressed to him by W. T. Steiger, esq., and one by Hon. Charles Mason, agents of the State, and having reference to the lands in question, and which it appears to be proper to lay before you. The draft of a bill is also herewith enclosed, which was furnished to Hon. Ja's W. Grimes in a letter of this Department dated the 22d ultimo, of which I also enclose a copy.

In the matter of the grant for the improvement of the Des Moines River, as also adjusting the later grants for railroad purposes, the Department deals directly with the State, and not with parties claiming under her.

To a portion of the lands to which the joint resolution No. 37 relates, two claims under different laws of Congress have been preferred on behalf of the State.

266 The draft of a bill which I furnished to the Hon. J. W. Grimes contains such provisions as would enable the State to make a fair settlement with the parties who claim adversely to each other under the respective grants, but does not depart from the simple proposition that the same tracts of land have only been once granted to the same grantee.

Since my letter to Senator Grimes was prepared I have modified my views to some extent, and am now prepared to recommend the confirmation, on the basis of the Department's draft of a bill, of all the lands in contest which have been sold, granted, or conveyed by the State, and should this suggestion meet the approval of the committee, the end proposed would be attained by striking out from the first section of the bill the following words, viz, "And have been settled upon and cultivated," (see lines 9 and 10,) and inserting in their stead the words "or granted or conveyed."

It will be perceived that the bill of the Department proposes a settlement between the United States and Iowa, as a condition of the confirmation of the claim of the State to the tracts that have been certified to her improperly by the Department. This plan I regard as strictly just, in view of the decision of the Supreme Court that said tracts constitute no part of the grant for the improvement of the Des Moines River.

Should Congress, however, be willing to confirm the acts of my predecessor, and relinquish to the State all title now remaining in the United States in the tracts so improperly certified, I think that legislation should be confined to that single proposition.

The joint resolution No. 37, now before me, uses some very general and indefinite terms. The preamble is objectionable as giving but a limited recital of facts such as have an argumen attive bearing in favor of the propositions of the joint resolution.

Inasmuch as a fair recital of all the important facts would be cumbersome, I respectfully suggest the omission altogether. The second part of the resolution is, in my opinion, liable to misconstruction, and likely to give rise to controversy as to its true meaning. Its probable effect would be, should it become a law, to secure to the State more land than this Department has ever recognized as having been granted.

In addition to a confirmation of all the tracts embraced in the list certified by the Secretaries of the Treasury and Interior, it ap-

267 pears to contemplate the allowance of scrip or selection in all

cases in which any of the lands on said lists have been otherwise "transferred," which would amount to an additional grant of so much land as is now involved in controversy between parties claiming adversely to each other, under the State of Iowa, the understanding of this Department being that the State has transferred to individuals, and an incorporated company, all the lands falling to her under Des Moines grant, and to certain railroad companies all the lands which she will receive under the grants for the construction of railroads.

Three of the lines of the Iowa land-grant roads cross the strip of country along the Des Moines River where the lands lie, which have been improperly certified under the Des Moines grant, and a large body of land is claimed under both titles.

Heretofore this Department has refused to recognize the claim under the railroad grant of May 15th, 1856, because it had approved the selections of the same lands, under an earlier grant, that of 8th August, 1846; the unifrom construction of railroad grants having been that they confer nothing upon a State, either as granted in place or as a basis of indemnity selections, where they interfere with prior grants to the same State. But now since the Supreme Court of the United States has decided that the certification of the lands along the Des Moines River, above the mouth of the Rac'oon Fork, has conferred no title, and that the land was no part of the Des Moines grant, the claim of the State to a large portion of the same land, under the grant for railroad purposes can no longer be called in question, and the second title saves the land embraced by it to the grantee, although the prior title is regarded as worthless.

In this state of facts, it appears to me to be sufficient for the United States to assent to a relinquishment of any title which may still remain in them to the land erroneously certified to the State of Iowa, leaving the State and those claiming under her, to settle the controversies which arise under the State laws, in the courts of the State.

If the State is called upon to settle with the United States, and accedes to the proposition, there appears to be some propriety in advancing to her land scrip with which to satisfy her own double grants of the same lands; but if she is not called upon for a settlement with the United States, I am unable to perceive any principle upon which
268 more land should now be granted her, in order that she may settle with persons to whom she has twice conveyed the same tract.

As adapted to carry out this simple proposition, I have the honor to submit the following form of a joint resolution, viz: *Resolved, by the Senate and House of Representatives of the United States in Congress assembled*, That all the title which the United States still retain in the tracts of land along the Des Moines River, and above the Rac'oon Fork thereof, in the State of Iowa, which have been heretofore certified to said State improperly by the Department of the Interior as part of the grant by act of Congress, approved August 8th, 1846, be, and the same is hereby, relinquished to the State of Iowa.

Beyond this simple proposition, the question arising upon the joint resolution No. 37, appears to be this: Shall the United States, because of the doing of void acts by her executive officers in the Land Departments, grant more land to Iowa than she could have had, if the void act complained of, had been clothed with the full authority of law.

Very respectfully, your ob't servant,

J. THOMPSON, *Secretary.*

Hon. R. W. JOHNSON,
Ch'r Com. Pub. Lands, U. S. Senate.

Des Moines River grant.

Joint resolution in relation to the Des Moines River grant.

Resolved by the general assembly of the State of Iowa, That our Senators in Congress be instructed, and our Representatives requested to use their influence to procure from the proper Department at Washington, an order to prevent the sale of any lands within the State of Iowa, heretofore held by the Department of the Interior to have been granted to the Territory of Iowa, by act of Congress of August 8th, 1846, to aid in the improvement of the Des Moines River, until the action of Congress can be had, in regard to quieting said grant and to obtain from Congress the passage of an act or resolution, granting or confirming to the State of Iowa, all of said river lands to the north line of the State of Iowa, to be used by the State in paying
269 the just claims assumed by the State against the Des Moines River improvement, and in building a railroad along said river: *Provided*, That no such act shall in any manner apply to any lands heretofore granted to the State for railroad purposes, or for any other purposes whatever.

Resolved, That the Secretary of State, shall send copies of these resolutions to each of our Senators and Representatives in Congress.

Approved April 7th, 1862.

(Endorsed:) Filed May 17, 1869. George B. Corkhill, clerk.

270 "EXHIBIT NO. 16 OF PL'FF."

Report of The Des Moines River Improvement and Navigation Company.

"Exhibit No. 16 of Pl'ff."

OTTUMWA, *Nov. 16th*, 1856.

To his Excellency JAMES W. GRIMES, *Gov. of the State of Iowa.*

SIR: The De' Moine' Navigation and Railroad Company beg herewith respectfully to present to you, and, through you, to the general assembly, the accompanying full exhibit of its affairs and financial condition.

In order to a correct understanding of the operations of the company and a just appreciation of the causes which have disappointed its expectations of a rapid completion of the work, it is necessary to give a brief narrative of its history.

Almost from the first it has had to encounter serious obstacles, which have not only embarras'ed its most earnest efforts, but have em-
271 paired the confidence of the people, who, not aware of the justifying circumstances, have naturally attributed the results to inaction or bad faith.

The company was organized under the laws of Iowa May 6th, 1854 and, having purchased their rights from the parties who then held the contract from the State on the 9th day of June, 1854, entered directly into a new contract with the State officers. With this contract, which was published in the journal of the next legislature, you are doubtless familiar. It was based upon the public assumption that the grant of Congress for the improvement of the river covered the unappropriated odd sections to the source of the river, and comprised somewhat over a million of acres.

The State agreed to sell these lands to the company for $1,300,000, to

be expended upon the improvement and in payment of the State debt then outstanding, the lands to be conveyed to the company
272 at the rate of 24,000 acres whenever the disbursements should reach $30,000.

The company at once adjusted and paid the State debt to the amount of over $70,000, and immediately entered upon the necessary surveys of the river, which were indispensable preliminaries to the work of construction. As early as the ensuing May nearly half of the work was prepared for "letting," and was put under contract.

At this point information was received that the general assembly had passed an act in derogation of the title which had been agreed to be given to the company, and requiring that no patents should issue to the company, except with a derogatory clause inserted. (Vide sec. 8 of chapter 153, page 224, Laws of 1854.

The immediate effect of this was to dishearten the friends of the enterprise by the impression that the legislative body was disposed to embarr*i*s it; but this was passed over in the belief that, as the
273 work progressed, a more liberal feeling would prevail, and the construction was urged with as much vigor as the season admitted of.

An unusually inclement winter retarded the work, though the surveys of the remaining portion of the river was continued to completion, and the balance of the work was prepared for letting.

Early in the winter rumors became rife that the General Government intended to take the position that the grant did not extend beyond the Raccoon Fork. Application was at once made to the General Land Office for the transfer of the remaining lands to the State, and the Commissioner of the General Land Office promptly responded that he held the grant as not extending above F't Des Moines.

In the mean time the locks & dams to Fort Des Moines had been advertised for "letting." An immediate appeal was taken from the
274 decission of the Commissioner to the Secretary of the Interior, who sustained his subordinate, and thence an appeal was taken to the President of the United States, by whom the matter was referred to the Attorney General.

Much delay followed, though the Government was informed of the immediate necessity of a decission, as the "lettings" of the new work were then immediately pending.

The Attorney General and other members of the Cabin*att* urged upon the company not to permit the pendency of this question to interfere with the lettings, but to proceed upon the assurance that the action of the Land Office would not be sustained.

To this were added the solicitations of your Senators and Representatives in Congress and the State officers having charge of the improvement to the same effect, who assid'ously co-operated with the officers of the company in their efforts to avert the blow so insidiously aimed at the greatest interests of the State.

The company accordingly proceeded, and allot'ed the work to
275 contractors, but it did not feel at liberty to enter upon the prosecution of the new work whilst a question striking at the validity of the whole grant was in doubt.

Again the company pressed upon the Government a settlement of the question, but it was not until June that a decission was given, and then it was that the grant might be construed as extending to the north line of the State, provided the State should release the lands lying above.

Thus the matters have stood until this time, the Government refusing to recognize the grant as extending beyond the north line of the State. (cutting off about 300,000 acres of land.) And refusing to recoguize the grant as extending beyond the lands already approved to the State, except on condition of an execution of a release of the balance. In this condition of the grant the company felt that good faith towards the State required of it a suspension of new work until the wishes of the State in the premises could be ascertained.

276 The progress of the work having demonstrated the necessity of modifications in the proposed plans of construction, supplemental contracts were entered into with officers of the improvement, which, having been filed in the office of the secretary of state, were submitted to the late legislature and accompany this statement. The company has expended in payment of State indebtedness and construction (exclusive of the salaries of its officers and office expenses) more than the sum of $360,914 19, on account of which there have certified to it by the register and commissioner of the Des Moines improvement, two hundred and five thousand four hundred and eighty-nine & twenty-three one hundredths acres of land under its contract, leaving over a hundred thousand dollars due from the State, and for which it is in arrears to the company. To pay this would more than exhaust the balance of the lands, the title to which has as yet been transferred by the

277 General Government to the State. Excluding those which have been erroneously approved, and the entire balance of the grant is embarrassed by the refusal of the General Government to make more transfers to the State, except of condition of a release of the lands north of the State line.

The company availed itself of the assembling of the legislature in extra session in July last, to lay before that body these facts, and procure their request that the grant should be sustained, and such other action as the emergency of the interests of the State required, but in the press of business upon their attention, no action was taken.

It again presents these facts for your consideration. By reason of their existence the company has not been able to make that progress with the work that it wished and the public expected. It has endeavored to conduct all its operations with a strict regard to the interests of

278 the State, and it is conscious of having been actuated by only honorable intentions.

The embarrassments which have been narrated, and others arising from two seasons of almost universal and often fatal sickness of contractors and men, and from differences of opinion amongst the officers of the State as to the construction of some portions of the contract, have entailed much loss upon the company in many ways, but it is still desirous of completing the work in the true spirit of its contract. And to this end, or any other, it is ready to concur in any proper action which the wisdom and justice of your excellency and the general assembly may devise.

The accompanying exhibits are herewith respectfully presented, marked as follows:

No. 1. Report of Alvah Hunt, treasurer, showing the financial operations and rescourses of the company.

No. 2. Report of Ed. H. Tracy, chief engineer, upon the present

279 condition of the work, with an abstract of the estimated cost of completing it.

No. 3. Opinion of the Attorney General of the United States upon the

construction of the grant, and the order of the Secretary of the Interior thereon.

No. 4. Contracts of the company with the State.

All of which are respectfully submitted.

W. C. JOHNSON,
President Des Moines N. & R. R. Co.

280 OTTUMWA, *Nov. 19th*, 1856.

To the president of the De' Moine' Navigation & Railroad Company.

SIR: In accordance with your instructions I have prepared an estimate of the cost of completing the slackwater navigation of the Des Moines River, from its mouth on the Mississippi, to F't Des Moines, (Raccoon Fork,) and herewith present the same.

The estimate contemplates improving the present channel of the river, from the Mississippi to St. Francisville, a distance of about twelve miles, without locks. It is proposed to remove the snags and trees from the present bed of the river, and deepen the channel in several shoal places by dredging and confining the water, by means of wing dams in its lower stages, to a narrow channel, from St. Francisville to F't
281 Des Moines. The estimate is based upon building locks & dams. The locks are estimated as stone locks, and the dams as timber and stone, with wooden abutments on the side of the river opposite the locks.

The present state of the work.—Since the first of August, we have had a party at work, with the proper tools & fixtures, clearing snags & trees from the channel of the river. Below St. Francisville they have cleared a channel wide enough for the passage of steamboats from the Mississippi to near Big Yellow Banks, a distance of about six miles, and we are now going on vigorously with the work beyond that point.

We have also built a most substantial dredging-machine, which is at work excavating channels through the bars on the lower part of the river.

It is intended to keep the snag'ing and dredging going on until the river is closed by ice. If the fall and winter are open, it is ex-
282 pected to clear the snags from the channel as far as St. Francisville, by the opening of navigation in the spring.

At St. Francisville the coffer-dam is built, and the excavation of the pit is nearly completed. The water-sills of the lock are in, and the masonry started. A large amount of materials *are* now delivered, and the work is being prosecuted with vigor.

At Belfast—the 2nd lock—the walls are now built above high water, and can be completed early next season. The work has been energetically prosecuted during the low water of this year.

At Croton, the 3d lock is now in work*h*ing order, though it is one of the short locks, and will eventually have to be lengthened and some additional work done on the dam.

At Farmington—the 4th lock—the walls are built to nearly their full height, and there is stone enough prepared to finish them.
283 It was expected to finish this lock this season, but owing to the sickness during the months of August, September and October, the contractors were not able to keep the requisite force at work to complete it. It can be finished early next season, and the dam can be built during the low water of next season.

At Bonaparte—the 5th—and at Benton's Port—the 6th—locks and dams are in navigable order, though the locks are short, and will eventually

to be len ened, and the dams require some more work to complete them.

At Keosau ia—the 7th lock—the masonry is well started, and with proper energy on the part of the sub-contractors, the work can be completed and brought into use by the time of the June rise of the river to this place.

At Pittsburg—the 8th lock—the coffer-dam is now in, but I have been unable to get any masonry laid this year.

284 At Litchfield—the 9th lock—the masonry is started, and it is hoped that it will be completed early next year.

At Orville—the 10th lock—the masonry is started, and it is hoped that it will be completed next year.

At Iowaville, or Jordan's—the 10th lock—we had to change the location of the lock a short distance to get a good foundation. The masonry of the lock is started, and nearly all the materials for the lock are prepared, and it is expected to complete it early next season.

At Alpine—the 12th lock—the foundation for the lock is now about prepared, and the masonry can be started early in the spring.

At White Breast the coffer-dam is in and the foundation for the lock is nearly prepared.

285 Below Alpine a very large amount of materials is now prepared, and there will be no difficulty in procuring the balance that will be required to complete the work on this part of the line during the coming winter.

The water in the river this season has been very low, but the workmen have been very sickly. Some of the time more than one-half of our men, between St. Francisville and Ottumwa, have been sick at the same time, and for a short time nearly all the men were sick at once.

This sickness has very materially retarded the work.

Respectfully yours,

EDW. H. TRACY,
Chief Engineer D. N. & R. R. Co.

286 EXHIBIT No. 3.

Opinion of Attorney General in the matter of the Des Moines grant and the order of the Secretary of the Interior.

ATTORNEY GENERAL'S OFFICE,
May 29th, 1856.

SIR: Your communication of the 7th ultimo referred to me certain questions which have arrisen out of a grant of lands made by Congress to the State of Iowa, for the improvement of the navigation of the river Des Moines, in that State.

It appearing, on a cursory examination of the subject, that the State and a company to which it had committed the construction of the contemplated works, are largely interested in the questions to be resolved, notice of the reference was given, and further examination suspended, in order that arguments might be submitted in behalf either of the State of Iowa or of said company.

Those arguments came to hand on the 20th inst., since which 287 day the matter has remained under advisement.

The history of the case exhibits a spectacle of vacillation and contradiction of opinion on the part of the Government which it is humiliating to contemplate, and which constitutes all there is really embarrassing in the points now to be determined.

At the foundation is this act of Congress, the essential part of which is in the following words: "That there be, and hereby is, granted to the Territory of Iowa, for the purpose of aiding said Territory to improve the navigation of the Des Moines River, from its mouth to the Raccoon Fork, (so called,) in said Teritory, one equal moiety in alternate sections of the public lands remaining unsold and not otherwise disposed of, encumbered, or appropriated in a strip of five miles in width on each side of said river, to be selected in said Territory by an agent or agents to be appointed by the governor thereof, subject to the ap-
288 proval of the Secretary of the Treasury of the United States.

"SEC. 2D. * * * * That the lands hereby granted shall not be conveyed or disposed of by said Territory, nor by any State to be formed out of the same, except as said improvement shall progress, that is, the said Territory or State may sell so much of said land as shall produce the sum of thirty thousand dollars, and then the sales shall cease until the governor of said Territory or State shall certify the fact to the President that one-half of said sum has been expended upon said improvements, when the said Territory or State may sell or convey a quantity of the residue of said lands sufficient to replace the amount expended, and thus the sales shall progress as the proceeds thereof shall be expended, and the fact of such expenditure shall be certified as aforesaid.

"SEC. 3RD. * * * That the said river Des Moines shall be,
289 and forever remain, a public highway for the use of the Government of the United States, free from any toll or other charge whatever, for any property of the United States, or persons in their service, passing through or along the same.

"SEC. 4TH. That whenever the Territory of Iowa shall be admitted into the Union as a State, the lands hereby granted for the above purpose shall be and become the property of said State, for the purpose contemplated in this act and no other." * * *

This act originated in a bill introduced into the House of Representatives by the Hon. A. C. Dodge, delegate of the Territory of Iowa, referred to the Committee on Public Lands, and reported and passed substantially in the same words, in so far as regards the grant, as they now stand in the statute-book.

While the bill was pending before the committee, Mr. Dodge
290 obtained from the Commissioner of Public Lands, Mr. Shields, a report of the quantity of land which the grant would embrace, which he stated at 261,000 acres, expressly assuming that the range of land proposed to be granted was limited by the line "from its mouth to the Raccoon Fork."

That report accompanied the report of the committee and was reasoned upon therein as the basis of the bill which they presented to the House.

Notification of this act was made to the governor of Iowa by the Commissioner of Public Lands, soon after its passage, by letter, which assumed that the range of selection was limited as above stated, and transmitted plans in conformity therewith to guide the State in making selections.

The agent proceeded to make the selections within the limits defined, and information to that effect was communicated to the Commissioner by that agent and by the governor.

In all this series of acts there seemed to be an ample contem-
291 por'neous exposition of the law.

A suggestion of doubt whether the grant did not extend above

the Raccoon Fork first appears in a letter from the Commissioner, (Mr. Young,) dated February 23d, 1848; which doubt, however, as appears from a letter to him, dated January 8th, 1849, he had then ceased to entertain. Indeed, by proclamation of President Polk, under date of June 19th, 1848, countersigned by the same Commissioner, the lands on the Des Moines above the Raccoon Fork were brought into market with advertisements, as usual in the State of Iowa, and a considerable quantity of land was entered on sale or by pre-emption or land-warrants, which would have been covered by the grant if it extended above that fork.

In this stage of the case, the delegation of the State of Iowa in Congress, on the 8th of January, 1849, addressed a letter to the Secretary of the Treasury, to whose Department the General Land Office
292 then belonged, claiming that the State was entitled along the whole course of the Des Moines to its source, and requesting corresponding action on the part of the Government.

To this letter the Secretary replied, under date of March 2d, 1849, expressing the opinion that the grant "extends on both sides of the river from its source to its mouth, but not into lands on the river in the State of Missouri;" and on the same day he communicated a copy of the letter, as his decision on the question, to the Commissioner of Public Lands.

And thus things stood when, immediately afterwards, the supervision of the public lands passed to the new Secretary of the Interior, Mr. Ewing.

Subsequently, a list of selections, made up in conformity with Mr. Walker's opinion, having been reported by the Commissioner to Mr. Ewing for confirmation by the latter, he refused it, upon the
293 conviction expressed by him that the grant does not extend to the lands above Raccoon Fork.

He considered, as undoubtedly he might do, that Mr. Walker's opinion not having carried into effect, being an *unexpected* opinion merely, was open to revision; and he decided to suspend sales of the lands embraced in the claim of the State, in order to leave opportunity to Congress to "extend the grant" if it should see fit.

Mr. Ewing's decision is dated April 6th, 1850, and an appeal was taken therefrom to the President, (General Taylor.) He referred the question to the Attorney General, (Mr. Johnson,) who, in his opinion, dated July 19th, 1850, came to the conclusion that the grant applied to the lands above the Raccoon Fork. (Opinions, ed. 1857, p. 2149.)

It does not appear that this opinion was acted on, so as to dispose of the question, for, in a paper addressed by the Commissioner of
294 Public Lands, (Mr. Butterfield,) to the President, dated September 26th, 1850, the opinion of Mr. Johnson is reviewed, and objections to its conclusions are submitted; and thus the question remained open at the accession of the next President, (Mr. Fillmore.)

During *the* administration, the first material step in the business consists of a reference of the case to the Attorney General, (Mr. Crittenden,) followed by an opinion of the latter, dated December 3d, 1850, to the effect that the questions involved were not of a nature to call for or justify the present interposition of the Pres'ent of the United States, they being appropriate only to the jurisdiction of the Secretary of the Interior. (Opinions, Farnham's ed., vol. v., p. 275.)

It would appear from this conclusion that Mr. Crittenden did not become aware that the matter was regularly before the President on appeal from the decision of the Secretary of the Interior.

295 Thus the papers went back to the Interior Department, and the Secretary, (Mr. Stuart,) referred the matter to the Attorney General, (Mr. Crittenden,) requesting his official opinion on these points, namely:

1st. The effect of Mr. Walker's letter;

2nd. That of Mr. Johnson's opinion; and,

3rd. The true construction of the disputed grant.

Mr. Crittenden, by letter of June 30th, 1851, replied that, in his opinion, the letter of Mr. Walker was not an act done, but an opinion expressed, and therefore, had no binding effect upon his successors; that the opinion of Attorney General Johnson was but advisory, having no compulsory effect on the Secretary to whom it was addressed, and that the grant, in his judgment, was limited to the lands below Raccoon Fork. (Opinions, Farnham's ed., vol. v, p. 390.)

On the 26th of the same July, Mr. Stuart communicated Mr. Crittenden's opinion to the Commissioner, with expression of concurrence in its conclusions, but permitting Mr. Ewing's order to with'old the
296 lands from market to continue in force "until the end of the approaching session of Congress."

But, on the 26th of October, he again addressed the Commissioner on the subject, and directed the selections of the State above Raccoon Fork to be reported for his approval, assigning the following reasons:

"I have considered and carefully reviewed my decision of the 26th of July last, and in doing so, I find that no decision I can make will be final, as the question involved partakes more of a judicial than of an executive character, which must ultimately be determined by the judicial tribunals of the country; and although my own opinions as to the true construction of the grant is unchanged, yet in view of the great conflict of opinion among the executive officers of the Government, and also in view of the opinions of several eminent jurists which have been presented to me in favor of the construction contended
297 for the State, and to approve the selection without prejudice to the rights, if any there be, of other parties, thus leaving the question as to the proper construction of the statute entirely open to the action of the judiciary."

It would appear from this that Mr. Stuart was overruled, for he expressly says that his own opinion of the law remains unchanged, and the reasons which he gives for acting against the law, as he understands it, and as expounded by Attorney General Crittenden, are unsatisfactory, and would equally well apply to any other controverted subject before the Department.

However this may be, here was a decission, and, in conformity with it, three lists were made out at the Land Office, namely:

List No. 1. Showing the tracts falling within the limits of the Des Moines grant above Raccoon Fork of the Des Moines River, so far
298 as the surveys have extended under the decission of the Secretary of the Treasury of 2d March, 1849, that such grant extended to the north boundary of the State.

List No. 2. Showing tracts disposed of within those limits in the interval between the date of one of the previous orders limiting the grant, and one of those extending it above the forks.

List No. 3. Showing the vacant lands subject to the claim of the State. To the latter Mr. Stuart appended the following order:

"DEPARTMENT OF THE INTERIOR, *October* 30, 1851.

"The selections embraced in the within list (No. 3) are hereby ap-

proved, in accordance with the views expressed in my letter of the 29th inst. to the Commissioner of the General Land Office, subject to any rights which may have existed at the time the selections were made known to the Land Office by the agents of the State; it being expressly understood that this approval conveys to the State no title to any tract or tracts which may have been sold or otherwise disposed of, prior to the receipt by the local land officers of the letter of the Commis-
299 sioner of the General Land Office communicating the decision of Mr. Secretary Walker to the effect that the grant extended above the Raccoon Fork.

"ALEX'R H. H. STUART, *Secretary.*"

Continuing to act on the same premises of judgement, the Land Office, it seems, reported another list to you in the following terms:

"A list showing the vacant lands in odd-numbered sections above the Raccoon Forks and within five miles of the Des Moines River, so far as the surveys have progressed, falling to the State of Iowa under the act of the 8th of August, 1846, as construed by the Secretary of the Treasury in his letter of the 2d of March, 1849, and of the Secretary of the Interior of the 29th of October, 1851, which have not heretofore been approved;" which list you approved in these words:

"DEPARTMENT OF THE INTERIOR, *December* 17, 1853.

"The selections of the within list are hereby approved to the
300 State of Iowa, under the act of August 8th, 1846, without prejudice to the rights, if any there be, of other parties.

"R. MCCLELLAND, *Secretary.*"

It is true, as stated in your communication to me, your attention was not called to the general question involved, but still the act was done. To the administrative history of the case, as thus presented, certain collateral facts are now to be added, in order to the full understanding *to* all its relations. Of lands included within the grant, the amount selected and approved is 321,000 acres below the fork.

Proceeding above it we at length come to two confluents of the Des Moines. One of them, in a map before me, is denominated the "East Fork of the Des Moines." This stream flows out of the lake situated on the line which divides the Territory of Minnesota from the State of Iowa, and the stream itself is wholly within that State. The other confluent has its origin far up in the Territory of Minnesota, at
301 a distance of, say, eighty-five miles north of the dividing line, and this, also, on the same map, bears the name of "Des Moines."

In a map before me, published in 1844, and founded on Nickollet's, the main river is called "Keosaqua or Des Moines" only to a point just above the Raccoon Forks, beyond which it is called the River of the Sioux. This may serve to explain the phraseology of the act, and to justify the original construction placed on the grant by the Government.

Of lands embraced in the claim of the State, and within its limits, the quantity above the Raccoon Fork is 560,000 acres, of which 260,347 acres have already been passed over to the State by Mr. Stuart, and by yourself, leaving less than 300,000 acres now in controversy between the United States and the State, within the limits of the State.

Add to this an estimated quantity of 272,000 acres on the west branch of the Des Moines, north of the line of Iowa, and in Minnesota.
302 The Des Moines, it may be further added, according to a statement before me, made up at the Land Office, can scarcely be considered

as a navigable river in the upper part of its course above the Raccoon Fork.

On these facts you present the following questions, namely:

1. Whether the decision of Mr. Stuart and the consequent action of the Department down to the present time are conclusive in favor of the claim of the State of Iowa?

2. Whether, if it be an open question, the grant extends, in my opinion, above the Raccoon Fork?

3. Whether it is to be considered as reaching into the Territory of Minnesota?

I proceed to state such views as occur to me on the whole subject, to be applied afterwards to the particular questions which you propound. I suppose it must be conceded that an opinion of the Attorney General is not conclusive; that is, it is not compulsory on the President or even on a head of Department. It is inconvenient, however, to have
303 conflict of opinion between the Attorney General and a head of Department; and that inconvenience is placed in the strongest light by the facts of this case, where the affirmative opinion of one Attorney General went disregarded by one Secretary, and a negative opinion of another Attorney General by the succeeding Secretary. There could be no more flagrant example of confusion of opinion and action. A Secretary undoubtedly entitled to have and to act upon his conscientious opinion of a question, even after he has taken the opinion of the Attorney General; but the interests of parties and the credit of the Government require decision; and it would seem that any such conflict of opinion between the Secretary asking and the Attorney General giving official advice, should be at once referred to their commons superior, the President, in order that the particular question of administration itself may receive the authoritative decision of the Executive Department.

That did not happen in this case in either of its stages,
304 and thus all the embarrassment of contradicting opinions and acts, with the uncertainty of present duty which they create, are transmitted to you for determination.

It is necessary, now, for me to weigh the reasons of Mr. Crittenden against the reasons assigned by Mr. Johnson, and conclude which of them shall be overruled by me. That would be an unwelcome task. It must be admitted, on the mass of argument before me, that there are two sides to the question of the true legal intendment of the act of Congress. At the same time it is due to frankness to say that, if constrained to judge between them, the inclinations of my mind would be to the side accepted by Mr. Crittenden, because the language of the statute admits of such construction; and, because, on a retrospect of the history of the case, it is impossible for me to doubt as to the actual intentions of Congress; that is, if the question were one of new impression, the tendency of my judgement would be to say that the grant is limited to the line of the improvements, namely, the River Des Moines below the Raccoon Fork. But it is not a question of new
305 impression. Nay, it has passed beyond opinion into action, and at this point of time it is more material to consider what has been done than what has been thought on the subject-matter. I wish, if possible, to find something firm to stand upon in what has been done.

In so far as regards selections already *im*proved, whether by yourself or by Mr. Stuart, it is clear that the Government cannot undo that. What Mr. Stuart did in this respect with deliberation, what you did, without the questions involved being suggested to you, was,

in each case, done by the competent legal authority, and binds the Government. One Secretary has no more lawful power to undo a thing lawfully done by his predecessor in a matter of grant than in a matter of account; no more right where a settlement is in favor of a third party than where it is in favor of the United States. When a thing is decided and done by the head of a Department, acting within the scope of his lawful authority, it can be revised by his successor only on the ground of a mistake in a matter of fact, or the discovery and production of material new testimony. (Mr. Crittenden's opinion of December 28, 1852, MS.; see also Bank of Metropolis vs. The United States, XV Peters, p. 400; ex parte Randolph, II Brocken, p. 470.) If the acts of Mr. Stuart and yourself in this respect had undertaken (as they do not) to dispose of any contending rights of third parties, the latter would have had their remedy at law; but what you have done is final as respects the United States.

306 But you have erred in continuing to follow the line of action which your predecessor had prescribed, and which the Commissioner of Public Lands assumed as settled in presenting to you for approval lists made out on the premises of the subsisting decision of Mr. Stuart.

And, if you erred (inadvertently) in thus approving selections made by the State above the Raccoon Fork, shall you now stop and chang' the rule of action which Mr. Stuart had prescribed to the Commissioner?

The answer to these questions is not included in the preceeding conclusions. It is one thing to undo an act done, and quite another to cease to persevere in a previous line of action, as to acts of a continuous nature.

It might with much plausibility be argued that, while Mr. Walker's order was an opinion merely, and did not bind Mr. Ewing, so what Mr. Stuart did, though final as to lands actually approved, was but a

307 precedent when a new list comes up, and may be rejected by you as a precedent, though it cannot be reversed or annulled as an act; that the disposition of the particular lands made by him is irrevocable, but the principle on which he did it is open to re-examination as respects any other lands in the same right claimed by the State; and that, in executing the same law, you are to execute it according to your own understanding of its force and effect.

That may be so, and yet the contingency is not exactly of the application of a precedent to a new case. For the grant to Iowa is one thing, although it be composed of parts or of new sets of parcels appertaining to the general whole.

Mr. Stuart decided to adopt the opinion of Mr. Walker, which carried the grant above the Raccoon Fork, and he proceeded to execute, and did execute that decision in part, and the true question is of the completion of the execution by you, of what had been partially executed by Mr. Stuart.

308 I think it must be a clear case of manifest illegality, in the work commenced and half executed by one Secretary, to justify the abandonment of it by his successor.

Is the present such a case of palpable violation of law?

That cannot be pretended in the face of the opinions of Mr. Walker, and Mr. Johnson, and the administrative acquiescence in those opinions on the part of Mr. Stuart.

In my judgement, it is not for the good of the public service, while it is prejudicial and sometimes grossly unjust to private interests con-

cerned for the Executive to break off things half done because of mere doubts of the legality of the decisions upon which commencement was made, or even the belief that, upon better reflection at the outset, a different decision would have been rendered.

To indulge in such oscillation of action under the influence of ordinary causes of perturbation is not seemly upon the part of the Gov-
309 ernment. In the present case of lands above the Raccoon Fork, claimable by the State within its limits, twenth-six*th*s fifty-sixth parts, nearly one-half, the United States have already recognized as belonging to the State. I think you may, if you choose, well consider that a determination of the question proper, to be acquiesced in by you as a settled fact of administration.

But this conclusion is placed by me on the ground only of a decission by Mr. Stuart, proper to be accepted by his successor as constituting final action of the Government.

It has been suggested in argument that inferences in favor of the present claim of the State may deduced from a clause in the recent act making a grant of lands to the State of Iowa, to aid in the construction of certain railroads in that State, (May 16th, 1856.) The words are:

"That any and all lands heretofore reserved to the United States by an act of Congress, or in any manner by competent authority,
310 for the purpose of aiding in any object of internal improvement, or for any other purpose whatsoever, be, and the same are hereby, reserved to the United States, from the operation of this act, except so far as it may be found necessary to locate the routes of railroads through such reserved lands, in which case the right of way only shall be granted, subject to the approval of the President of the United States.

This provision is rather doubtfully worded. I suppose that it intends to enact that the alternate sections reserved to the United States for the sake of augmented sale value, in case of any previous grants to the State for State objects, shall continue to be so reserved now, and shall not be taken as part of the lands subject to present grant to the State; and if the title still remains in the United States, the right of way is to be passed upon by the President of the United States. Such an act of the President would apply still more distinctly to any case of
311 actual continuing reservation to the United States, for the uses of the United States.

Concluding, at any rate, that the general object is to protect the rights of the United States, in any such case, if it exists, it is urged that such a provision would have been superfluous, had not the Des Moines grant extended above the Raccoon Fork.

Well, suppose a construction which makes it superfluous, what then? There are many superfluous provisions in the statutes. Of course no very cogent argument can be derived from that consideration.

Moreover, if it were expressly said in the provision that the Des Moines grant was intended , still it would only operate as enactment ex majori cantela, to guard against interferences in case the present controversy should be determined in favor of the State.

But the argument erred in supposing that no other grants of
312 land have been made to the State of Iowa for the purpose of aiding in objects of internal improvements, or for any other purpose whatever.

Various other grants of land have, from time to time, been made to the State. (See exempli gratia, V Stat. at Large, pp. 453, 455; ibid, pp. 789, 790; VI Stat. at Large, p. 810.)

In a word, Congress, by this provision, said: "We have already made

several grants of land to Iowa for one purpose or another, which may or may not have been located, and we do not design by this act to undertake to do what, indeed, we could not do if we would; that is, divert those grants from their lawful destination for the use of railroads, on account of which the present new grants are made to the State."

On the whole, therefore, it seems to me this provision does not serve, in any way, to change the premises of the question or the conclusions founded on those premises.

313 Remains the question on which of the two upper confluents of the Des Moines—the eastern or western—the land is to be taken. I conceive that point to be absolutely determined by the premises of my conclusions.

Mr. Walker's decision, as we have seen, was that the grant extended "on both sides of the river from its source to its mouth, but not into lands on the river in the State of Missouri."

Now, the language of the act is explicit, granting to Iowa the alternate sections "in a strip five miles in width on each side of said river" Des Moines; and the improvement *in*, in the equally explicit terms of the act, "from its mouth to the Raccoon Fork." But while carrying the grant above the Raccoon Fork to the "source" of the Des Moines, where the improvement does not reach, he lops it off below along the line of improvement by excluding "lands on the river in the State of Missouri." The explanation of which is that, for the last twenty-five miles of its course, the river Des Moines is the dividing line between the States of Missouri and Iowa. Missouri enjoys, directly, all the

314 benefits of the improvement of the navigation of the river, but no lands in Missouri are to be comprehended in the grant, notwithstanding its terms are of lands on each side of the river, for the obvious and sufficient reason that the act contains no provisions adequate to enable Iowa to take, hold, and manage lands in the State of Missouri. I conceive that the considerations which induced Mr. Walker to diminish, by construction, the scope of selection for twenty-five miles on one side of the river below the Raccoon Fork, show that in extending the grant above to the "source" of the Des Moines, he intended to confine it within the limits of the State of Iowa.

Such was the understanding of the subject which guided the action of Mr. Stuart, the lists which he approved expressly referring to the limit of the north boundary of the State; and that is the utmost point to which, in my judgement, you can lawfully go in case you acquiesce in and accept as a rule for yourself the opinion of Mr. Walker and the

315 action of Mr. Stuart. They unquestionably had before them the maps of the State, in which the eastern branch of the Des Moines was alone depicted, taking its rise in a lake on the bound'ry line of Minnesota.

If they had knowledge of any western branch of greater or less length they treated the eastern branch as the true Des Moines.

I think they must have done so because they could not have done otherwise.

Mr. Walker did not say and could not have said that the grant extends into Minnesota. If he had apprehended any such consequence of deciding that the grant extends above the Raccoon Fork, he could not have made this decision, but must have referred the State, as Mr. Ewing afterwards did, to Congress.

Thus is plainly to be inferred from the consideration that the act of Congress cannot be executed if it be so construed as to assume that the grant extends into Minnesota. It contains no provisions in virtue

316 of which one State is to hold public domain within the limits of another State or inchoate State.

Impressed by the force of this consideration, Mr. Walker excluded from the purview of the grant the land on one side of the river for the length of twenty-five miles, though plainly comprehended by the letter of the act.

Of course, it availed nothing to say that, when the grant was made, the part of Minnesota affected was included in the limits of the State of Iowa, and that, therefore, the letter of the law extends the grant beyond the northern line of the State. So also the letter of the law comprehends lands in Missouri.

But the letter of the law, in the former case as well as in the latter, must yield to the legal objection that, without apt language of enactment to that express effect, it cannot be inferred from other words of enactment that a grant of lands to one State extends into
317 another State, (including, in each phrase, inchoate States.)

Moreover, we are not dealing with the import of the grant on its face, or as construed while Iowa was a Territory and included *in* a part of the present Minnesota.

If we go back to that day, we find the grant construed and accepted on both sides as not extending above the Raccoon Fork, and, of course, not involving any possible question of the upper 'course of the Des Moines. If we now stood there at that point of time, my decision in the case would be precisely the reverse of what is now in effect, though precisely the same in form and tenure, that is, to accept as final the previous action of the Executive, (including President Polk's proclamation,) which limited the grant to the Raccoon Fork.

I should be the more fortified in such a conclusion, because the maxim stare decisis would have then applied to the case without qualification or doubt; and also because, if the naked question of the
318 construction of the statute were before me, as it would then have been, my judgement would have been satisfied with the construction put upon it in that early stage of the case by the United States, and not objected to by the State.

While at that time the idea of acquiescing in the thing decided would have confined the grant to the Des Moines below the Raccoon Fork, the same idea requires that the grant, though carried by your predecessor above the Raccoon Fork, should yet be confined within the limits of the State of Iowa.

That is the decision whose authority is invoked as controlling you, and which, if you accept at all, you accept *on* the final decision of the whole matter.

If you throw up the decision of Mr. Stuart, founded on Mr. Walker's opinion; if you come to the conclusion that that is not to be acquiesced in as final administrative action; if you go behind it, then you come at once, per saltum, to the state of the question as it stood anterior to the 2nd of March, 1849.

319 At that point we shall have all the arguments of Mr. Attorney General Johnson in favor of the finality of the executive action to coun*c*il acquiescence in the then existing practical construction of the law.

If, passing over this consideration, we proceed to reason about the meaning of the law, we do not have the advantage of the elaborate arguments on that point which have since been officially presented by Mr. Johnson and also by Mr. Attorney General Crittenden. But all those arguments would possibly occur to us, and we might be the more

easily brought to the same conclusion with the latter by fresher cotemporaneous knowledge of the legislative history of the act of Congress.

In fine, after the most mature reflection, it seems to me that only two tenable alternatives present themselves in the case; one to stand on the action of Mr. Walker and Mr. Stuart, not as legal doctrine, but
320 as decision, and the other rejecting all the intermediate vacillations of opinion, and go back to the original action and stand on that as decision, not as legal doctrine.

Either of these conclusions would be advisable according to the rules of law, for if it be unlawful to go behind executive decisions, then the last decision in the case was a violation of law, and should be rejected because of its illegality.

I have hesitated much on the question whether that be not the true view of the subject, but for reasons already suggested, have come to the conclusion, on the whole, to advise you to stand on the last decision, which gives to the State the lands along the course of the Des Moines up to the northern boundary of the State.

There is a collateral consideration which has weight with me. It is discreditable to the Government that its views of a law and its consequent action should be shifting about like a weather-vane, as they
321 have done in this case. I wish, if it be possible, to stop that. I think the alternative lines of duty, either of which you may lawfully pursue, and beyon' which there is no other apparently lawful course, indicate the means of producing the desirable result of now concluding the subject in so far as regards the Executive.

I advise, therefore, that you propose to the State of Iowa and its assigns, to acquiesce in and accept the decission of Mr. Stuart as final, and to approve selections accordingly, provided the State or its assigns will themselves acquiesce in and accept that decision as final.

If they refuse to treat that decision as final, they cannot expect you to do so. They should be bound if you are.

If they consent to enter into satisfactory stipulations of contract to that effect, you can with safety award to them the residue of the claim up to the northern boundary of the State. If they decline this proposition, then it is clear, in my opinion, that you are completely dis-
322 charged from any obligation to act on the premises of Mr. Walker and Mr. Stuart.

Nay, it becomes impossible for you to do so; for the very supposition of this alternative is, that the State of Iowa denies the finality of the decision; that is, denies that, so far as regards her, it is a decision; and if not a decision for her, then it is not one for the United States.

In that event, you are forcibly thrown back on the first decision of the Government—that from which Mr. Walker departed—and must, in my opinion, absolutely refuse to approve any more selections above the Raccoon Fork, the effect of which would probably be to remit the parties to Congress, which alone has full power to cut the gordian knot in which the subject has been tangled up, by reason of the inexplicitness of the original act of Congress, and the uncertainties regarding its meaning, which have embarras'ed the action of the successive administrators of the Government.

I am, very respectfully,

C. CUSHING.

Hon. R. McCLELLAND,
Sec. of the Interior.

323 GENERAL LAND OFFICE, *Nov. 17th*, 1856.

I, Thomas A. Hendricks, Commissioner of the General Land Office, do hereby certify that the annexed is a true and literal exemplification of the original on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed at the city of Washington, on the day and year above written.

[L. S.] THOMAS A. HENDRICKS,
Commissioner of the General Land Office.

DEPARTMENT OF THE INTERIOR, *June 9th*, 1856.

SIR: I return herewith the papers in reference to the grant for the improvement of the Des Moines River, which accompanied your report of the 24th of March, and enclose therewith several letters and arguments which have been received here since the date of your report.

324 Having submitted the subject to the Attorney General for his opinion upon the questions involved, I enclose a copy of such opinion furnished me under date of the 29th ult.; and also, a letter, under date of the 5th inst., from Hon. Reverdy Johnson, (attorney for the claimants under the grant,) in regard to the conditions upon which the subsequent approvals, up to the limits of the State of Iowa, are recommended by the Attorney General to be made.

In the subsequent action upon selections not yet approved, I have concluded to be governed by the advice of the Attorney General, as contained in the paragraph nere the close of such opinion, beginning with the words, "I advise, therefore, that you propose to the State of Iowa and its assigns," and ending with, "You can with safety award to them the residue of the claim up to the northern boundery of the State."

325 It will be perceived from the endorsement on Mr. Johnson's letter, above referred to, that he has undertaken to procure the assent of the State and its assigns to the conditions referred to, so that the necessity is obviated of any direct proposition to that effect on the part of the Department, but no further action will be taken until the parties are heard from on this point.

In the certificate of approval, hereafter for my signature on any lists submitted, the fact should be stated that the approval being based upon the prior action of the Department, and upon the ground that the grant is to be confined to the northern boundery of the State of Iowa, the acceptance by the State and its assigns would be considered an acquiescence on their part in this limit, and an abandonment of all claim beyond it, as it is upon this base alone, I can feel justified in yielding my assent to the claim preferred.

326 Should the assent of the parties be given in writing, the certificate of approval will be so varied from the language above as to conform to that state of facts, but without loosing sight of the real ground-work of my assent to the approval.

Respectfully, your obed't servant,

R. McCLELLAND,
Secretary.

To THOMAS A. HENDRICKS,
Commissioner of the General Land Office.

327 EXHIBIT No. 4.

Contracts of the De' Moine' Navigation and Railroad Company.

Articles of agreement made and entered into this ninth day of June, 1854, by and between the Des Moines Navigation & Railroad Company, (a corporation formed under the laws of the State of Iowa,) party of the first part, and the State of Iowa, by Josiah H. Bonney, commissioner of the Des Moines river improvement, by and with the consent of Uriah Biggs and George G. Wright, assistant commissioner' in the State of Iowa, for and in behalf of said State of Iowa, party of the second part, witnesseth—

And whereas the commissioners before named, have heretofore entered into an agreement with Henry O'Rielly, bearing date the 17th day of December, eighteen hundred and fifty-three, and an additional and explanatory agreement, dated April 18th, 1854, for the com-
328 pletion of the Des Moines river improvement, and which said agreements, contracts, and all rights of said Henry O'Rielly, by and with the assent and approval of both parties thereto, have been assigned and transferred to and for the benefit of the Des Moines Navigation and Railroad Company, and in pursuance of a stipulation of the said party of the second part, made simultaneously with said agreements and to carry the same fully into effect:

The said parties, for the purpose of simplifying and more fully explaining the said contracts and agreements, the said Des Moines Navigation and Railroad Company of the first part, and the said Josiah H. Bonney, commissioner, with the consent and approval of Uriah Biggs and George G. Wright, assistant commissioners, of the second part, hereby enter into the following agreement:

First. The said party of the first part doeth hereby covenant and agree to and with the party of the second part, for considera-
329 tions hereinafter named, to make and finish the Des Moines River improvement from the Mississippi to the Raccoon Forks on said Des Moines River. The said improvement to be made according to the plan and specification of the engineer of said improvement heretofore made and determined upon, as to style, character, and quality——

(For conclusion of this agreement see page 762, original.)

330 EXHIBIT No. 17 OF PL'FF.

STATE LAND OFFICE, DES MOINES, IOWA.

I, C. C. Carpenter, register of the State land office, of the State of Iowa, hereby certify that the following table which was compiled from the records and files of my office, correctly shows among other things the odd sections of land in townships 86, 87, 88, 89, & 90, of ranges 27, 28, 29, & 30, which lie within five miles of the Des Moines River, on the east side thereof, and south of the 2d correction line, which were certified to the State of Iowa under the Des Moines River grant, act of 1846, under the certificates of Secretaries Stuart of 29 Oct., 1851, and McClelland, referring thereto, and under the railway grant of 1856, to aid in the construction of the Dubuque and Pacific Railroad, viz:

"D."

A table exhibiting the lands approved to the State of Iowa under the construction given to the act of Congress of August 8th, 1846, previous to the decision of the Supreme Court of the United States, in the case of The Dubuque and Pacific Railroad Company vs. Litchfield, together with such parts of said lands as have been subsequently certified to the State as railroad lands, and which are not included in the lists of lands approved and certified to State under joint resolution of Congress of March 2, 1861; also, showing the railroad limits within which these lands lay.

332 CERTIFIED UNDER DES MOINES GRANT.					CERTIFIED AS RAILROAD LANDS.		RAILROAD LIMITS.
Parts of sections.	S.	T.	R.	Acres.	Parts of sections.	Acres.	
S. W. S. W	5	79	23	40.00			Mississippi & Missouri River Railroad.
All	7	79	23	669.44	All	669.44	" " "
S. W. N. E., N. W., N. h'f S. W., N. W. S. E	17	79	23	320.00	N. W., N. h'f S. W., S. W. N. E., N. W. S. E	320.00	" " "
N. W. N. E., N. h'f N. W	21	79	23	120.00			" " "
W. h'f N. W., W. h'f S. W., S. E. S. W	31	80	23	232.00	W. h'f N. W., W. h'f S. W., S. E. S. W	232.00	" " "
Lot 6	9	78	24	43.75	Lot 6	43.75	" " "
S. h'f and fr. on left bank	17	78	24	320.47	S. h'f, & lot 1, fr. left bank	320.47	" " "
All	19	78	24	653.12	All	653.12	" " "
N. W. N. W	21	78	24	40.00	N. W. N. W	40.00	" " "
N. W. N. E., N. W., W. h'f S. W., N. E. S. W	29	78	24	320.00	N. W., N. W. N. E., N. h'f S. W., S. W. S. W	320.00	" " "
N. E., E. h'f N. W., N. W. N. W., N. h'f S. E	31	78	24	363.08	N. E., E. h'f N. W., N. W. N. W., N. h'f S. E	363.08	" " "
E. h'f, N. h'f N. W., S. h'f S. W	1	79	24	508.62	N. E., N. h'f N. W., S. h'f S. W., S. E	508.62	" " "
S. W. N. W	3	79	24	40.00	S. W. N. W	40.00	" " "
W. h'f S. W., lots 5, 6, 7	5	79	24	188.45	N. W. S. W., lots 5, 6, 7	148.45	" " "
N. h'f S. E., S. W. N. E., S. h'f S. E., W. h'f	7	79	24	523.42	All	523.42	" " "
W. h'f N. E., W. h'f S. E., W. h'f S. W., S. E. S. W	11	79	24	280.00	W. h'f N. E., W. h'f S. E., W. h'f S. W., S. E. S. W	280.00	" " "
E. h'f, S. W., E. h'f N. W	13	79	24	560.00	N. E., E. h'f N. W., S. h'f	560.00	" " "
All	15	79	24	640.00	All	640.00	" " "
W. h'f, S. W., S. E. S. W., lots 7, 8, 9	17	79	24	208.25	W. h'f S. W., S. E. S. W., lots 7, 8, 9	208.25	" " "
All	19	79	24	646.74	All	646.74	" " "
W. h'f S. W., S. W. N. W., lot 3	21	79	24	140.30	S. W. N. W., W. h'f S. W., lot 3	140.30	" " "
All	23	79	24	640.00	All	640.00	" " "
N. W., W. h'f S. W	25	79	24	240.00	N. W., W. h'f S. W	240.00	" " "
N. h'f N. E., N. h'f N. W	29	79	24	160.00	N. h'f N. E., N. h'f N. W	160.00	" " "
N. W	31	79	24	169.96	N. W	169.96	" " "
All	3	80	24	708.23	All	708.23	" " "
333 S. h'f S. W	7	80	24	86.61	S. h'f S. W	86.61	" " "
All	9	80	24	640.00	All	640.00	" " "
All	11	80	24	640.00	All	640.00	" " "
S. W. N. E., W. h'f, W. h'f S. E	13	80	24	440.00	W. h'f, W. h'f S. E., S. W. S. E	440.00	" " "
N. h'f, S. E. q'r	15	80	24	480.00	N. h'f, S. E	480.00	" " "
N. E	17	80	24	160.00	N. E	160.00	" " "
E. h'f N. E	19	80	24	80.00	E. h'f N. E	80.00	" " "
All	23	80	24	640.00	All	640.00	" " "
All	25	80	24	640.00	All	640.00	" " "

Table "D"—Continued.

CERTIFIED UNDER DES MOINES GRANT.					CERTIFIED AS RAILROAD LANDS.		RAILROAD LIMITS.
Parts of sections.	S.	T.	R.	Acres.	Parts of sections.	Acres.	
N. E. N. E., N. h'f N. W., S. h'f S. W., S. E.	27	80	24	360.00	N. E. N. E., S. h'f S. W., S. E. q'r.	280.00	Mississippi & Missouri River Railroad.
E. h'f S. E., S. W. S. E., lot 1	29	80	24	129.41	E. h'f S. E., S. W. S. E., lot 1	129.41	" " "
W. h'f N. W., N. E. N. W., S. W., lots 2, 3, 4, 5, 6	31	80	24	527.43	All	527.43	" " "
N. W., W. h'f S. E	33	80	24	240.00	N. W., W. h'f S. E	240.00	" " "
E. h'f N. E	35	80	24	80.00	E. h'f	80.00	" " "
W. h'f S. W., S. E. S. W	7	81	24	132.32	W. h'f S. W., S. E. S. W	127.32	" " "
All	19	81	24	642.08			" " "
S. W. S. W	21	81	24	40.00			" " "
W. h'f S. W	27	81	24	80.00	W. h'f S. W	80.00	" " "
All	29	81	24	640.00	All	640.00	" " "
S. E	31	81	24	160.00	S. E	160.00	" " "
All	33	81	24	640.00	All	640.00	" " "
All but N. E. N. E	1	78	25	643.65	W. h'f N. E., S. E. N. E., N. W., S. h'f	643.65	" " "
All	3	78	25	617.12	E. h'f, N. W., E. h'f S. W	617.12	" " "
E. h'f N. E., S. W. N. E., N. W. N. W., S. E. N. W	11	78	25	200.00	E. h'f N. E., S. W. N. E., S. E. N. W	160.00	" " "
E. h'f S. E., lots 6, 7, 8	13	78	25	231.55	E. h'f S. E., lots 6, 7, 8	231.55	" " "
E. h'f S. E.	23	78	25	80.00	E. h'f S. E	80.00	" " "
334 N. W. N. E., N. h'f N. W., N. E. S. W., E. h'f S. E., N. W. S. E.	25	78	25	280.00	N. E., E. h'f N. W., N. W. N. W., E. h'f S. E., N. E. S. E., N. E. S. W.	440.00	" " "
N. h'f	1	79	25	364.80	N. h'f	364.80	" " "
All	3	79	25	681.70	All	681.70	" " "
N. h'f N. E	5	79	25	99.91	N. h'f N. E	99.91	" " "
E. h'f N. W., N. W. N. W., E. h'f S. W., E. h'f	9	79	25	520.00	E. h'f, E. h'f N. W., N. W. N. W., E. h'f S. W	520.00	" " "
All	11	79	25	640.00	All	640.00	" " "
N. E. N. E., E. h'f S. W	13	79	25	120.00	N. E. N. E., E. h'f S. W	120.00	" " "
All	15	79	25	640.00	All	640.00	" " "
E. h'f N. E., E. h'f S. E	21	79	25	160.00	E. h'f N. E., E. h'f S. E.	160.00	" " "
W. h'f N. E., S. E. N. E., W. h'f S. E	23	79	25	600.00	S. h'f., S. h'f N. E., N. W. N. E., N. W	600.00	" " "
All	25	79	25	640.00	All	640.00	" " "
All but S. W. S. W	27	79	25	600.00	N. h'f, N. h'f S. W., S. E. S. W., S. E	600.00	" " "
W. h'f N. E., W. h'f S. E., W. h'f	35	79	25	480.00	W. h'f, W. h'f S. E., W. h'f N. E	480.00	" " "
S. h'f N. E	1	80	25	80.00	S. h'f N. E	80.00	" " "
S. h'f N. E., E. h'f S. E., lots 1, 2, 3, 4, 5, 6, 7	3	80	25	497.21	S. h'f N. E., E. h'f S. E., lots 1, 2, 3, 4, 5, 6, 7	497.21	" " "
All	5	80	25	689.74	All	689.74	" " "
All	7	80	25	652.00	All	652.00	" " "
All	9	80	25	640.00	All	640.00	" " "
Lots 1, 2, 3, 4, 5, 6, 7	11	80	25	239.63	Lots 1, 2, 3, 4, 5, 6, 7	239.63	" " "
Lots 3, 4, 7, 8	13	80	25	180.18	Lots 3, 4, 7, 8	180.18	" " "
All	15	80	25	640.00	All	640.00	" " "
All	17	80	25	640.00	All	640.00	" " "
All	19	80	25	653.04	All	653.04	" " "
All	21	80	25	640.00	All	640.00	" " "

All	23	80	25	640.00	All	640.00	"	"
All	25	80	25	640.00	All	640.00	"	"
335 All	27	80	25	640.00	All	640.00	"	"
N. E. q'r, W. h'f, S. W. S. E	29	80	25	520.00	W. h'f, N. E., S. W. S. E	520.00	"	"
N. E. q'r, E. h'f N. W., N. E. S. E	31	80	25	280.00	N. E., E. h'f N. W., N. E. S. E	280.00	"	"
All	33	80	25	640.00	All	640.00	"	"
All	35	80	25	640.00	All	640.00	"	"
All	3	81	25	616.55	All	616.65	Iowa Central Air-line Railroad.	
All	5	81	25	617.84	All	617.84	"	"
All	7	81	25	674.16	All	674.16	"	"
All	9	81	25	640.00	All	640.00	"	"
All	11	81	25	640.00	All	640.00	"	"
All	13	81	25	640.00			"	"
All	15	81	25	640.00			"	"
All	17	81	25	640.00			"	"
E. h'f, E. h'f N. W., N. W. N. W., E. h'f S. W	19	81	25	529.17			"	"
E. h'f	21	81	25	320.00			"	"
All	23	81	25	640.00			"	"
All	25	81	25	640.00			"	"
E. h'f N. E., W. h'f N. W	27	81	25	160.00			"	"
N. h'f N. E., lots 5, 6, 7, 8	29	81	25	268.37			"	"
All	31	81	25	675.62			"	"
S. W. S. W., lots 2, 3, 4, 5, 6	33	81	25	251.91			"	"
	35	81	25				"	"
All	5	82	25	635.18	All	635.18	"	"
All	7	82	25	658.86	All	658.86	"	"
W. h'f N. W., W. h'f S. W., S. E. S. W	9	82	25	200.00	W. h'f N. W., W. h'f S. W., S. E. S. W	200.00	"	"
All	17	82	25	640.00	All	640.00	"	"
336 W. h'f, W. h'f N. E., S. E. N. E., W. h'f S. E., N. E. S. E.	21	82	25	560.00	W. h'f N. E., S. E. N. E, W. h'f S. E., N. E. S. E	560.00	"	"
S. W. N. W., W. h'f S. W	27	82	25	120.00	W. h'f S. W., S. W. N. W	120.00	"	"
All	29	82	25	640.00	All	640.00	"	"
All	31	82	25	663.10	All	663.10	"	"
All	33	82	25	640.00	All	640.00	"	"
W. h'f, W. h'f N. E., W. h'f S. E	7	83	25	467.98	W. h'f, W. h'f N. E., W. h'f S. E	467.98	"	"
All	19	83	25	653.08	All	653.08	"	"
W. h'f N. W., S. W. q'r	29	83	25	240.00	W. h'f N. W., S. W. q'r	240.00	"	"
All	31	83	25	665.52	All	665.52	"	"
All	1	80	26	698.18	All	698.18	"	"
All	3	80	26	701.92			Mississippi & Missouri River Railroad.	
E. h'f, N. W., N. E. S. W	5	80	26	578.78			"	"
E. h'f, N. W., E. h'f S. W	9	80	26	560.00			"	"
All	11	80	26	640.00	All	640.00	"	"
All	13	80	26	640.00	All	640.00	"	"
N. h'f, N. E. S. E	15	80	26	400.00	N. h'f, N. h'f S. E	400.00	"	"
N. E. N. E	24	80	26	40.00	N. E. N. E	40.00	"	"
N. E., N. E. N. W., E. h'f S. E	25	80	26	280.00	N. E., N. E. N. W., E. h'f S. E.	280.00	"	"
S. E	1	81	26	160.00	S. E	160.00	Iowa Central Air-line Railroad.	
All but S. h'f S. W	3	81	26	500.56	E. h'f, N. W., N. h'f S. W	500.00	"	"
All	5	81	26	595.26	All	595.26	"	"
All	7	81	26	612.08	All	612.08	"	"
All	9	81	26	640.00	All	640.00	"	"

Table "D"—Continued.

CERTIFIED UNDER DES MOINES GRANT.					CERTIFIED AS RAILROAD LANDS.		RAILROAD LIMITS.
Parts of sections.	S.	T.	R.	Acres.	Parts of sections.	Acres.	
S. W. S. W., lots 5, 6, 7, 8, 9	11	81	26	302.04	S. W. S. W., lots	302.04	Iowa Central Air-line Railroad.
N. h'f, E. h'f S. E., lot 1	13	81	26	409.35	N. E. N. W., E. h'f S. W., lot 1	409.35	" " "
All	15	81	26	640.00	All	640.00	" " "
337 All	17	81	26	640.00	All	640.00	" " "
All	19	81	26	612.00	All	612.00	" " "
All	21	81	26	640.00	All	640.00	" " "
N. h'f, S. E	23	81	26	480.00	E. h'f, N. W	480.00	" " "
S h'f, S. E. N. W., lots 1, 2, 3, 4	25	81	26	545.42			" " "
All	27	81	26	640.00			" " "
All	29	81	26	640.00			" " "
N. E., N. E. N. W., E. h'f S. E., N. W. S. E	31	81	26	320.00			" " "
All	33	81	26	640.00			" " "
All	35	81	26	640.00			" " "
N. h'f N. E., E. h'f S. E., S. W. S. E., W. h'f S. W., S. E. S. W.	1	82	26	317.96	N. h'f N. E., E. h'f S. E., S. W. S. E., W. h'f S. W., S. E. S. W.	317.96	" " "
All	3	82	26	648.00	All	648.00	" " "
N. W. N. E., W. h f N. W., N. E. N. W., W. h'f S. W., S. E. S. W., lots 4, 5, 6, 7, 8.	5	82	26	448.90	N. W. N. E., N. h'f N. W., S. W. N. W., W. h'f S. W., S. E. S. W., lots 4, 5, 6, 7, 8.	448.90	" " "
All	7	82	26	608.00	All	608.00	" " "
All	9	82	26	598.46	All	598.46	" " "
E. h'f, N. W	11	82	26	480.00	E. h'f, N. W	480.00	" " "
All	13	82	26	640.00	All	640.00	" " "
All	15	82	26	497.58	All	597.58	" " "
All	17	82	26	640.00	All	640.00	" " "
All	19	82	26	613.24	All	613.24	" " "
All	21	82	26	640.00	All	640.00	" " "
E. h'f, N. W	23	82	26	480.00	E. h'f, N. W	480.00	" " "
All but S. W. S. W., lot 8, 9	27	82	26	480.36	W. h'f N. W., N. E. N. W., E. h'f S. E., lots 1, 2, 3, 4, 5, 6, 7,	480.36	" " "
All	29	82	26	640.00	All	640.00	" " "
All	31	82	26	621.60	All	621.60	" " "
338 All	33	82	26	640.00	All	640.00	" " "
S. h'f	35	82	26	320.00	S. h'f	320.00	" " "
All	1	83	26	521.60	All	521.60	" " "
W. h'f N. E., W. h'f	3	83	26	314.86	W. h'f, W. h'f N. E	314.86	" " "
E. h'f N. E., S. h'f	5	83	26	373.00	S. h'f, E. h'f N. E	373.00	" " "
Lot 2	7	83	26	43.15	Lot 2	43.15	" " "
All	9	83	26	640.00	All	640.00	" " "
E. h'f, E. h'f N. W., N. W. N. W., S. h'f S. W	11	83	26	520.00	E. h'f, E. h'f N. W., N. W. N. W., S. h'f S. W	520.00	" " "
All	13	83	26	640.00	All	640.00	" " "
W. h'f S. W., N. W	15	83	26	240.00	N. W., W. h'f S. W	240.00	" " "
N. E., N. h'f N. W., lots 1, 2, 3, 4, 6, 7, 8	17	83	26	513.50	N. E., N. h'f N. W., lots 1, 2, 3, 4, 6, 7, 8	513.50	" " "

	All	19	83	26	616.98	All	616.98			
	All	21	83	26	631.32	All	613.32			
	All	23	83	26	640.00	All	640.00			
	All	25	83	26	640.00	All	640.00			
	All	27	83	26	640.00	All	640.00			
	All	29	83	26	592.36	All	592.36			
	All	31	83	26	620.00	All	620.00			
	All	33	83	26	574.92	All	574.92			
	W. h'f, N. E., N. h'f S. E	35	83	26	560.00	W. h'f, N. E., N. h'f S. E	560.00			
	S. W. S. W	31	84	25	42.48	S. W. S. W	42.48			
	All	3	84	26	713.70	All	713.70			
	All	5	84	26	718.52	All	718.52			
	All	7	84	26	603.01	All	603.01			
	All	9	84	26	640.00	All	640.00			
	All	11	84	26	640.00	All	640.00			
339	All	15	84	26	640.00	All	640.00			
	All	17	84	26	640.00	All	640.00			
	All	19	84	26	624.50	All	624.50			
	All	21	84	26	640.00	All	640.00			
	W. h'f, W. h'f N. E., N. E. N. E., W. h'f S. E	23	84	26	520.00	W. h'f, W. h'f N. E., N. E. N. E., W. h'f S. E	520.00			
	W. h'f S. W	25	84	26	80.00	W. h'f S. W	80.00			
	All	27	84	26	640.00	All	640.00			
	All	29	84	26	640.00	All	640.00			
	All	31	84	26	599.76	All	599.76			
	All	33	84	26	640.00	All	640.00			
	All	35	84	26	640.00	All	640.00			
	S. h'f N. W., N. W. N. W., S. W. q'r	3	85	26	277.28	W. h'f N. W., S. E. N. W., S. W	277.28			
	All	5	85	26	629.54	All	629.54			
	All	7	85	26	611.98	All	611.98			
	All	9	85	26	640.00	All	640.00			
	S. W. N. E., W. h'f, W. h'f S. E., S. E. S. E	15	85	26	480.00	W. h'f, W. h'f S. E., S. E. S. E., S. W. S. E	480.00			
	All	17	85	26	640.00	All	640.00			
	All	19	85	26	613.16	All	613.16			
	All	21	85	26	640.00	All	640.00			
	W. h'f N. W., S. W. h'f	23	85	26	240.00	W. h'f N. W., S. W	240.00			
	All	27	85	26	640.00	All	640.00			
	All	29	85	26	640.00	All	640.00			
	All	31	85	26	618.16	All	618.16			
	All	33	85	26	640.00	All	640.00			
	W. h'f N. E., W. h'f, W. h'f S. E	35	85	26	480.00	W. h'f, W. h'f N. E., W. h'f S. E	480.00			
	All	3	86	26	625.92			Dubuque & Sioux City Railroad.		
340	All	5	86	26	624.86					
	All	7	86	26	606.82					
	All	9	86	26	640.00					
	W. h'f N. E., N. E. N. E., W. h'f, W. h'f S. E	11	86	26	520.00	W. h'f N. E., N. E. N. E., W. h'f W. h'f, S. E	520.00	Iowa Central Air-line Railroad.		
	All	15	86	26	640.00	All	640.00			
	All	17	86	26	640.00	All	640.00			
	All	19	86	26	607.76	All	607.76			
	All	21	86	26	640.00	All	640.00			
	All	29	86	26	640.00	All	640.00			
	All	31	86	26	607.84	All	607.84			
	All	33	86	26	640.00	All	640.00			

Table "D"—Continued.

CERTIFIED UNDER DES MOINES GRANT.					CERTIFIED AS RAILROAD LANDS.		RAILROAD LIMITS.
Parts of sections.	S.	T.	R.	Acres.	Parts of sections.	Acres.	
All except W. h'f S. W.	5	87	26	583.98	All except W. h'f S. W.	583.98	Dubuque & Sioux City Railroad.
S. h'f.	9	87	26	320.00	S. h'f.	320.00	" " "
N. h'f.	15	87	26	320.00			" " "
All	17	87	26	640.00			" " "
S. h'f.	21	87	26	320.00			" " "
W. h'f S. E.	23	87	26	80.00			" " "
E. h'f and S. W.	27	87	26	480.00			" " "
E. h'f N. E., W. h'f N. W., W. h'f S. W., E. h'f S. E.	29	87	26	320.00			" " "
All	33	87	26	640.00			" " "
All	35	87	26	640.00			" " "
S. W. S. W.	29	88	26	40.00	S. W. S. W.	40.00	" " "
All	31	88	26	580.68	All	580.68	" " "
All	1	81	27	593.64	All	593.64	Iowa Central Air-line Railroad.
N. E. q'r, E. h'f S. E.	11	81	27	240.00	N. E., E. h'f S. E.	240.00	" " "
N. h'f, S. E., E. h'f S. W.	13	81	27	560.00	N. h'f, S. E., E. h'f S. W.	560.00	" " "
341 E. h'f N. E.	25	81	27	80.00			" " "
All	1	82	27	633.66	All	633.66	" " "
All	3	82	27	639.68	All	639.68	" " "
N. E. q'r, E. h'f S. E.	9	82	27	240.00	N. E. q'r, E. h'f S. E.	240.00	" " "
All	11	82	27	640.00	All	640.00	" " "
All	13	82	27	640.00	All	640.00	" " "
All	15	82	27	640.00	All	640.00	" " "
All	23	82	27	640.00	All	640.00	" " "
All	25	82	27	640.00	All	640.00	" " "
N. E. N. E.	27	82	27	40.00	N. E. N. E.	40.00	" " "
E. h'f, E. h'f N. W., E. h'f S. W.	35	82	27	480.00	E. h'f, E. h'f N. W., E. h'f S. W.	480.00	" " "
All	1	83	27	481.07	All	481.07	" " "
All	3	83	27	528.04	All	528.04	" " "
All	5	83	27	525.24	All	525.24	" " "
All	7	83	27	646.08	All	646.08	" " "
All	9	83	27	640.00	All	640.00	" " "
All	11	83	27	640.00	All	640.00	" " "
All	13	83	27	640.00	All	640.00	" " "
All	15	83	27	640.00	All	640.00	" " "
All	17	83	27	640.00	All	640.00	" " "
All	21	83	27	640.00	All	640.00	" " "
All	23	83	27	640.00	All	640.00	" " "
All	25	83	27	640.00	All	640.00	" " "
All	27	83	27	640.00	All	640.00	" " "
E. h'f.	33	83	27	320.00	E. h'f.	320.00	" " "
All	35	83	27	640.00	All	640.00	" "

342	All	1	84	27	657.85	All	657.85	"	"	"
	All	3	84	27	710.78	All	710.78	"	"	"
	All	5	84	27	706.24	All	706.24	"	"	"
	All	7	84	27	643.84	All	643.84	"	"	"
	All	9	84	27	640.00	All	640.00	"	"	"
	All	11	84	27	640.00	All	640.00	"	"	"
	All	13	84	27	585.56	All	585.56	"	"	"
	All	15	84	27	640.00	All	640.00	"	"	"
	All	17	84	27	640.00	All	640.00	"	"	"
	All	19	84	27	643.84	All	643.84	"	"	"
	All	21	84	27	640.00	All	640.00	"	"	"
	All	23	84	27	579.25	All	579.25	"	"	"
	All	25	84	27	629.74	All	629.74	"	"	"
	All	27	84	27	635.53	All	635.53	"	"	"
	All	29	84	27	640.00	All	640.00	"	"	"
	All	31	84	27	645.20	All	645.20	"	"	"
	All	33	84	27	640.00	All	640.00	"	"	"
	All	35	84	27	599.22	All	599.22	"	"	"
	All	1	85	27	627.58	All	627.58	"	"	"
	All	3	85	27	582.14	All	582.14	"	"	"
	All	5	85	27	643.58	All	643.58	"	"	"
	All	7	85	27	638.60	All	638.60	"	"	"
	All	9	85	27	640.00	All	640.00	"	"	"
	All	11	85	27	590.64	All	590.64	"	"	"
	All	13	85	27	640.00	All	640.00	"	"	"
	All	15	85	27	605.51	All	605.51	"	"	"
343	All	17	85	27	640.00	All	640.00	"	"	"
	All	19	85	27	644.80	All	644.80	"	"	"
	All	21	85	27	640.00	All	640.00	"	"	"
	All	23	85	27	617.57	All	617.57	"	"	"
	All	25	85	27	640.00	All	640.00	"	"	"
	All	27	85	27	597.60	All	597.60	"	"	"
	All	29	85	27	640.00	All	640.00	"	"	"
	All	31	85	27	645.40	All	645.40	"	"	"
	All	33	85	27	640.00	All	640.00	"	"	"
	All	35	85	27	621.60	All	621.60	"	"	"
	E. h'f S. E., S. W. S. E., lots 5, 6, 7, 8	1	86	27	326.39					
	All	3	86	27	574.46					
	All	5	86	27	627.58					
	All	7	86	27	629.60					
	N. h'f	9	86	27	640.00					
	All	11	86	27	320.00					
	All	13	86	27	640.00	All	640.00			
	All	15	86	27	630.65					
	All	17	86	27	640.00					
	All	19	86	27	632.60	All	632.60			
	All	21	86	27	596.88	All	596.88			
	All	23	86	27	640.00	All	640.00			
	All	25	86	27	640.00	All	640.00			
	All	27	86	27	591.16	All	591.16			
	All	29	86	27	640.00	All	640.00			
	All	31	86	27	634.72	All	634.72			

CERTIFIED UNDER DES MOINES GRANT.					CERTIFIED AS RAILROAD LANDS.		RAILROAD LIMITS.
Parts of sections.	S.	T.	R.	Acres.	Parts of sections.	Acres.	
All	33	86	27	640.00	All	640.00	Iowa Central Air-line Railroad.
All	35	86	27	640.00	All	640.00	" " "
N. h'f, E. h'f S. E	1	87	27	426.44	N. h'f, E. h'f S. E	426.44	Dubuque & Sioux City Railroad.
All	3	87	27	673.90	All	673.90	" " "
All	5	87	27	681.60	All	681.60	" " "
W. h'f & S. E	7	87	27	444.30	W. h'f, & S. E	444.30	" " "
S. h'f	9	87	27	320.00	W. h'f	320.00	" " "
W. h'f	11	87	27	320.00	W. h'f	320.00	" " "
Lots 1, 2, 5, 6, 7, 8, E. h'f N. E., S. W. N. W., W. h'f S. W.	15	87	27	472.80			" " "
All	17	87	27	611.25			" " "
All	21	87	27	587.82			" " "
Lots 1, 2, 3, and S. W. S. W	23	87	27	121.00			" " "
E. h'f	27	87	27	320.00			" " "
W. h'f	33	87	27	320.00			" " "
All	35	87	27	640.00			" " "
S. W. N. W., W. h'f S. W	3	88	27	120.00	S. W. N. W., W. h'f S. W	120.00	" " "
All	5	88	27	701.30	All	701.30	" " "
All	7	88	27	598.86	All	598.86	" " "
All	9	88	27	640.00	All	640.00	" " "
W. h'f, W. h'f N. E., W. h'f S. E	15	88	27	480.00	W. h'f N. E., W. h'f, W. h'f S. E	480.00	" " "
All	17	88	27	640.00	All	640.00	" " "
All	19	88	27	599.10	All	599.10	" " "
All	21	88	27	640.00	All	640.00	" " "
S. h'f, S. h'f N. E., S. h'f N. W	23	88	27	480.00	S. h'f, S. h'f N. E., S. h'f N. W	480.00	" " "
All	25	88	27	640.00	All	640.00	" " "
All	27	88	27	640.00	N. h'f, N. h'f S. W., S. W. S. W., N. W. S. E	480.00	" " "
345 All	29	88	27	640.00	All	640.00	" " "
E. h'f N. E., W. h'f N. W., S. W	31	88	27	285.28	E. h'f N. E., W. h'f N. W., S. W	285.28	" " "
All	33	88	27	640.00	All	640.00	" " "
All	35	88	27	640.00	N. h'f S. E., N. h'f N. E., N. h'f	480.00	" " "
W. h'f, W. h'f N. E., S. E. q'r	19	89	27	583.92	W. h'f, W. h'f N. E., S. E. q'r	583.92	" " "
S. h'f S. W	21	89	27	80.00	S. h'f S. W	80.00	" " "
S. h'f N. W., S. W., W. h'f S. E., S. E. S. E	27	89	27	360.00	S. h'f N. W., S. W., W. h'f S. E., S. E. S. E	360.00	" " "
All	29	89	27	640.00	All	640.00	" " "
All	31	89	27	663.72	All	663.72	" " "
All	33	89	27	640.00	All	640.00	" " "
W. h'f N. W., S. E. N. W., S. W., W. h'f S. E	35	89	27	360.00	W. h'f N. W., S. E. N. W., S. W., W. h'f S. E	360.00	" " "
E. h'f, N. h'f N. W., N. E. S. W	1	83	28	352.25	E. h'f, E. h'f N. W., N. E. N. W	352.25	" " "
All	1	84	28	696.26	All	696.26	" " "
E. h'f N. E	11	84	28	80.00	E. h'f N. E	80.00	" " "

E. h'f, E. h'f N. W., E. h'f S. W.	13	84	28	480.00	E. h'f, E. h'f N. W., E. h'f S. W.	480.00	"	"
All	25	84	28	640.00	All	640.00	"	"
All	1	85	28	645.60	All	645.60	"	"
E. h'f	11	85	28	320.00	E. h'f	320.00	"	"
All	13	85	28	640.00	All	640.00	"	"
E. h'f N. E., E. h'f S. E., S. W. S. E	23	85	28	200.00	E. h'f N. E., E. h'f S. E., S. W. S. E	200.00	"	"
All	25	86	28	640.00	All	640.00	"	"
E. h'f	35	85	28	320.00	E. h'f	320.90	"	"
All	1	86	28	627.88			"	"
N. h'f, N. E. S. W., S. E	3	86	28	503.02			"	"
All	11	86	28	640.00			"	"
346 All	13	86	28	640.00			"	"
E. h'f N. E., E. h'f S. E	15	86	28	160.00	E. h'f N. E., E. h'f S. E	160.00	Iowa Central Air-line Railroad.	
All	23	86	28	640.00	All	640.00	"	"
All	25	86	28	640.00	All	640.00	"	"
E. h'f N. E., E. h'f S. E	27	86	28	160.00	E. h'f N. E., E. h'f S. E	160.00	"	"
All	35	86	28	640.00	All	640.00	"	"
All	1	87	28	622.58	All	622.58	Dubuque & Sioux City Railroad.	
N. h'f, S. W	3	87	28	518.28	W. h'f, N. E	518.28	"	"
All	5	87	28	673.98	All	673.98	"	"
All	7	87	28	621.98	All	621.98	"	"
All	9	87	28	640.00	All	640.00	"	"
W. h'f, S. E	11	87	28	480.00	W. h'f, S. E	480.00	"	"
All	13	87	28	640.00			"	"
All	15	87	28	640.00			"	"
All	17	87	28	640.00			"	"
All	21	87	28	640.00			"	"
All	23	87	28	640.00			"	"
All	25	87	28	640.00			"	"
All	27	87	28	640.00			"	"
N. h'f N. E., S. E. N. E., N. E. S. E	29	87	28	160.00			"	"
N. E., N. E. N. W., N. h'f S. E., S. E. S. E	33	87	28	320.00			"	"
All	35	87	28	640.00			"	"
All	1	88	28	709.10	All	709.10	"	"
All	3	88	28	719.64	All	719.64	"	"
N. h'f, lot 4	5	88	28	439.87	N. h'f, lot 4	439.87	"	"
347 S. E	7	88	28	160.00	S. E. q'r	160.00	"	"
All	9	88	28	640.00	All	640.00	"	"
S. W., S. h'f N. W.	11	88	28	240.00	S. h'f N. W., S. W	240.00	"	"
N. h'f, S. E. q'r	13	88	28	480.00	N. h'f, S. E	480.00	"	"
All	15	88	28	599.68	All	599.68	"	"
N. h'f, S. E., E. h'f S. W	17	88	28	510.55	N. h'f, S. E., E. h'f S. W	510.55	"	"
W. h'f, S. E. q'r, W. h'f N. E	19	88	28	541.58	S. h'f, N. W., W. h'f N. E	541.58	"	"
N. h'f	21	88	28	320.00	N. h'f	320.00	"	"
All	23	88	28	606.68	All	606.68	"	"
W. h'f	25	88	28	320.00	W. h'f	320.00	"	"
All	27	88	28	619.88	All	619.88	"	"
All	29	88	28	640.00	All	640.00	"	"
All	31	88	28	619.08	All	619.08	"	"
S. W	33	88	28	160.00	S. W	160.09	"	"
All	35	88	28	593.25	Lots 3, 4, 5, 6, N. h'f, W. h'f S. E., N. E S. E	593.25	"	"
W. h'f, S. W. N. E., W. h'f S. E	1	89	28	414.03	W. h'f, S. W. N. E., W. h'f S. E	414.03	"	"

Table "D"—Continued.

CERTIFIED UNDER DES MOINES GRANT.					CERTIFIED AS RAILROAD LANDS.		RAILROAD LIMITS.
	Parts of sections.	S.	T.	R.	Acres.	Parts of sections.	Acres.	
	All	3	89	28	589.02	All	589.02	Dubuque & Sioux City Railroad.
	All	5	89	28	606.16	All	606.16	" " "
	All	7	89	28	312.99	Lots 1, 2, 3, 4, 5, 6, N. E. N. E.	312.99	" " "
	All	9	89	28	640.00	All	640.00	" " "
	All	11	89	28	640.00	All	640.00	" " "
	W. h'f, W. h'f N. E., W. h'f S. E., S. E. S. E.	13	89	28	520.00	W. h'f, W. h'f N. E., W. h'f S. E., S. E. S. E.	520.00	" " "
	All	15	89	28	640.00	All	640.00	" " "
	All	17	89	28	640.00	All	640.00	" " "
	All	21	89	28	640.00	All	640.00	" " "
	All	23	89	28	640.00	All	640.00	" " "
348	All	25	89	28	640.00	All	640.00	" " "
	All	27	89	28	640.00	All	640.00	" " "
	All	29	89	28	558.21	Lots 1, 2, 3, 4, N. E., E. h'f N. W., N. W. N. W	558.21	" " "
	All (fr.)	31	89	28	1.41	Lot 1	1.41	" " "
	All	33	89	28	640.00	All	640.00	" " "
	All	35	89	28	640.00	All	640.00	" " "
	W. h'f, W. h'f N. E., W. h'f S. E	1	90	28	469.75			" " "
	All	3	90	28	642.18			" " "
	All	5	90	28	638.94			" " "
	All	7	90	28	640.54	All	640.54	" " "
	All	9	90	28	640.00	All	640.00	" " "
	All	11	90	28	640.00	S. h'f	320.00	" " "
	W. h'f N. W	13	90	28	80.00	W. h'f N. W	80.00	" " "
	All	15	90	28	640.00	All	640.00	" " "
	All	17	90	28	640.00	All	640.00	" " "
	All	19	90	28	640.13	All	640.13	" " "
	All	21	90	28	640.00	All	640.00	" " "
	All	23	90	28	640.00	All	640.00	" " "
	S. W. N. W., W. h'f S. W	25	90	28	120.00	W. h'f S. W., S. W. N. W	120.00	" " "
	All	27	90	28	640.00	All	640.00	" " "
	All	29	90	28	640.00	All	640.00	" " "
	All	31	90	28	490.27	All	490.27	" " "
	All	33	90	28	640.00	All	640.00	" " "
	All	35	90	28	640.00	All	640.00	" " "
	All	19	89	28	446.84	All	446.84	" " "
	S. h'f, N. W., S. W. N. E., lots 1, 2	5	91	27	599.67			" " "
349	All	7	91	27	668.54			" " "
	W. h'f N. W	31	91	27	97.00			" " "
	All	5	92	27	691.89			" " "
	All	7	92	27	658.24			" " "
	All	9	92	27	640.00			" " "
	W. h'f N. W	15	92	27	80.00			" " "

All	17	92	27	640.00			"	"	"
All	19	92	27	665.92			"	"	"
All	21	92	27	615.65			"	"	"
All	29	92	27	639.84			"	"	"
All	31	92	27	668.68			"	"	"
All	1	91	28	635.52			"	"	"
All	3	91	28	627.42			"	"	"
All	5	91	28	636.08			"	"	"
Lots 1 and 2	7	91	28	32.00			"	"	"
All	9	91	28	640.00			"	"	"
All	11	91	28	640.00			"	"	"
All	13	91	28	640.00			"	"	"
All	15	91	28	640.00			"	"	"
Lots 1, 2, E. h'f, E. h'f N. W., S. W	17	91	28	626.60			"	"	"
Lots 1, 2, 3, 4	19	91	28	188.36			"	"	"
All	21	91	28	640.00			"	"	"
All	23	91	28	640.00			"	"	"
All	25	91	28	640.00			"	"	"
All	27	91	28	640.00			"	"	"
Lots 1, 2, 3, 4, E. h'f, E. h'f N. W., N. E. S. W.	29	91	28	612.25			"	"	"
350 Lot 1	31	91	28	35.70			"	"	"
All	33	91	28	640.00			"	"	"
All	35	91	28	640.00			"	"	"
All	1	92	28	690.80					
Lots 1, 2, 3, N. E., E. h'f N. W., N. W. N. W., E. h'f S. E., N. W. S. E	3	92	28	564.44			"	"	"
N. h'f, S. E., lots 1 and 2	11	92	28	598.80			"	"	"
All	13	92	28	640.00			"	"	"
Lots 1 and 2	15	92	28	18.70			"	"	"
All	23	92	28	640.00			"	"	"
All	25	92	28	640.00			"	"	"
Lots 1, 2, 3, 4, S. E. N. E., S. E	27	92	28	415.18			"	"	"
Lot 1	31	92	28	20.90			"	"	"
S. h'f N. E., S. h'f, lots 1, 2, 3, 4	33	92	28	581.62			"	"	"
All	35	92	28	640.00			"	"	"
All	1	87	29	668.16	All	668.16	"	"	"
N. E. N. E	3	87	29	46.90	N. E. N. E	44.92	"	"	"
All	1	88	29	579.73	All	688.39	"	"	"
All	3	88	29	733.18	All	727.92	"	"	"
All	5	88	29	740.10	All	733.08	"	"	"
All	7	88	29	613.28	All	612.48	"	"	"
All	9	88	29	640.00	All	640.00	"	"	"
All	11	88	29	640.00	All	640.00	"	"	"
All	13	88	29	640.00	All	640.00	"	"	"
All	15	88	29	640.00	All	640.00	"	"	"
351 All	17	88	29	640.00	All	640.00	"	"	"
All	21	88	29	640.00	All	640.00	"	"	"
All	23	88	29	640.00	All	640.00	"	"	"
All	25	88	29	640.00	All	640.00	"	"	"
All	27	88	29	640.00	All	80.00	"	"	"
N. h'f N. E	29	88	29	80.00	N. h'f N. E	640.00	"	"	"
All	35	88	29	640.00					

Table "D"—Continued.

CERTIFIED UNDER DES MOINES GRANT.					CERTIFIED AS RAILROAD LANDS.		RAILROAD LIMITS.
Parts of sections.	S.	T.	R.	Acres.	Parts of sections.	Acres.	
Lots 1, 2, & 3, S. E. S. E.	1	89	29	149.10	Lots 1, 2, 3, and S. E. S. E.	149.10	Dubuque & Sioux City Railroad.
Lot 1	1	90	29	4.15	Lot 1	4.15	" " "
Lots 1, 2, 3, 4, S. E. N. E., S. E.	13	90	29	406.90	Lots 1, 2, 3, 4, S. E. N. E., S. E.	406.90	" " "
Lots 1 & 2	25	90	29	73.88	Lots 1 & 2	73 88	" " "
E. h'f N. E., E. h'f S. E.	1	88	30	186.56	E. h'f N. E., E. h'f S. E.	186.56	" " "
Total				528,758.73		*200,759.09	

* In limits of Mississippi & Missouri River Railroad, 34,269.81 acres.
In limits of Iowa Central Air-line Railroad, 109,303.09.
In limits Dubuque & Sioux City Railroad, 57,187.19.

352 That they were not certified to the State of Iowa under the act of July 12, 1862, extending the Des Moines River grant, north of the Raccoon Forks, or under the resolution of 2 March, 1861, but were treated as being granted under the railway grant of 1856, in the settlement of the State of Iowa with the United States, of which the following is a correct copy of the original on file in this office:

WASHINGTON CITY, *May* 21, 1866.

Pursuant to the authority conferred by the act of the State of Iowa, approved March 30, 1866, "for the adjustment of certain land-claims with the General Government," I, Josiah A. Harvey, register of the State land office, and as commissioner on behalf of the State, do hereby assent to the adjustment as herein stated, the said adjustment to be held as binding and conclusive on the said State, as provided in said act.

JOSIAH A. HARVEY,
Register of the State Land Office, and
Commissioner on behalf of the State of Iowa.

WASHINGTON CITY, D. C., *May* 23, 1866.

To the honorable census board of the State of Iowa, Des Moines:

Pursuant to the requirement of chapter 79, of the acts of the
353 11th general assembly, I have the honor to report that I have consummated an adjustment with the United States of the excess of lands received by the State under the grant of Sept. 4, 1841; also the lands confirmed to the State by the joint resolution of March 2, 1861, and the lands falling to the State under the act of Congress of July 12, 1862, and transmit herewith for your approval a copy of the agreement containing the terms of said adjustment.

It will be observed that the State in this settlement is credited with the whole amount of land in odd-numbered sections, and lying within five miles of the Des Moines from the Raccoon Fork to the northern boundary of the State, determined to be 558,004.06 acres.

The State is then charged with the several quantities of land following, to wit:

1st. Indemnity land, selected under special certificate, dated April 25, 1863	297,603.74 acres.
2d. Remaining lands in place yet to be certified	167,109.02 acres.
3d. Lands in place confirmed by joint resolution of March 2, 1861	44,838.64 acres.
4th. Lands selected and heretofore certified on the East Fork of the Des Moines River and more than five miles from the western or main branch	11,661.80 acres.
354 5th. The excess selected and approved to the State as part of the 500,000-acre grant under act of Sept. 4, 1841	35,473.54 acres.
—making in all	556,686.74 acres,

and leaving due to the State, to balance the whole amount of the grant, 1,317.32 acres.

For this balance a special certificate will be issued.

The 11,661.80 acres on the east branch of the Des Moines River, here-

tofore approved to the State as a part of the Des Moines River grant, and disposed of by the State as such, are held by the Department under the decision of the Attorney General to be a legitimate and proper offset to so much of this grant; hence they are charged to the State in this settlement.

The 35,473.54 acres charged in excess under the 500,000-acre grant, (act 1841,) includes the 22,660.05 acres over and above the 500,000 acres which is embraced in the book of diagrams approved and certified to the State on the 12' of September, 1854, and which has hitherto been considered as the excess, and also the 12,813.51 acres, which were once approved as a part of the 500,000-acre grant, and afterwards rejected and approved and certified as a part of the Des Moines River grant. These lands have been known as the river school lands.

355 Notwithstanding that they have been disposed of as a part of the Des Moines River lands by the State, said chapter 79 requires that they shall be included and certified as a part of the grant of 1841.

Deeming it my duty to carry out the provision' of the law, regardless of my personal opinion as to their correctness or propriety, I have thus included these lands, thereby increasing said excess to 35,473.54 acres, and allowed them to be deducted from the amount of the Des Moines River grant due the State, as the Department had determined.

The necessary and proper lists, according to the terms of this adjustment, will be made and approved by the Secretary and delivered to me or sent to the State.

In the preparation of these lists all lands which appear at the General Land Office as having been selected as swamp under act of September 28, 1850, and all tracts to which pre-emption rights had attached prior to July 12, 1862, will be excluded.

If, however, any of the tracts thus listed and certified shall be found to have been duly selected under said act of September 28, 1850, and shall be shown by legal investigation to be swamp or overflowed, or to belong to the State by said act, the Government will ap-

356 prove and certify other lands of like quantity thereof.

This adjustment, which I think is fair and just and should be satisfactory to the State, will, when approved by you, be a final settlement between the State of Iowa and the United States of all claims under the Des Moines River grant, as well as of the act of 1841, except so far as valid and legally-subsisting adverse rights may be found to exist to any of the tracts thus approved to the State.

The excess of the 500,000-acre grant, (35,473.54 acres,) thus deducted is by an agreement between the State and the Des Moines Valley Railroad Company, (the beneficiary of the grant,) to be credited to said company at the rate of one dollar and twenty-five cents per acre in the satisfaction of claims against the State on account of the improvement of the Des Moines River. Said company should therefore be credited on the claims they are under obligation to satisfy with the sum of $44,341.67.

My authority extends only to the settlement with the General Government. I have no power to carry out this agreement between the State and the company. It is but just, however, to say that this settlement has been made with the United States with the full understanding that this arrangement should be carried out.

357 The company, through its agents, has for a long time been laboring to this end. The opinion and decision of the Secretary of the Interior, a copy of which accompanying Mr. Kilbourne's report,

made last winter, is herewith transmitted for your examination in connection with adjustment, is the result of their efforts.

The labors of these agents, (Messrs. Kilbourne & Mason,) heretofore in the premises, have greatly relieved me, and enabled me to close up the settlement thus early. It is due the company that this credit be given as soon as possible.

I hope therefore that this entire arrangement will meet with your approbation, and that you will, as I think you have the right and may safely do, fully consummate and carry it out by giving said company the benefit of said credit against said claims without delay.

Very respectfully submitted.

J. A. HARVEY,
Commissioner.

358 Adjustment of the Iowa Des Moines River grant under act of July 12th, 1862, and joint resolution of March 2, 1861.

DEBIT.

	Acres.
The State of Iowa with the quantity of indemnity lands selected under special certificate, dated April 25, 1863..	297,603.74
The lands in place to be certified.....	167,109.02
The quantity selected on the East Fork of the Des Moines River, and certified to the State under the original law of August 8, 1846.....	11,661.80
The excess selected and approved to the State under the 500,000-acre grant of 1841.....	35,473.54
	556,686.74
Remaining indemnity due the State.....	1,317.32
	558,004.06

CREDIT.

The State of Iowa with the whole area of the grant above the Raccoon Fork.....	558,004.06

General Land Office, May 21, 1866.

J. M. EDMUNDS,
Commissioner General Land Office.

DEPARTMENT OF THE INTERIOR, *May* 22, 1866.

The adjustment as herein stated is hereby approved.

JA'S HARLAN,
Secretary.

359 THE STATE OF IOWA, *ss:*

The within adjustment, as stated, is hereby approved by us for the State of Iowa, June 20, 1866.

W. M. STONE, *Governor,*
JAMES WRIGHT, *Sec'y State,*
JOHN A. ELLIOTT, *Auditor,*
W. H. HOLMES, *Treasurer,*
Census Board.

That it further appears from the records and files of this office that the odd sections in townships 89 & 90, of ranges 28 & 29, which lie west of the Des Moines River, and within five miles thereof, (except the N. fr. ½ of N. W. ¼ of sec. 5, t'p 90, range 29,) were never certified by the United States to the State of Iowa, under the act of 1846 or 1862, but were certified as part of the railway grant above named under the act of 1856, and indemnity given as per the settlement of the State of Iowa with the United States, a copy of which is hereinbefore given.

That the deeds of the State of Iowa to The De' Moine' Navigation and Railroad Company do not include the said odd sections in townships 89 & 90, of ranges 28 & 29 west of the Des Moines River, and the deeds of the State of Iowa to The Des Moines Valley Railroad Company do not include them, but the said Des Moines Valley Railroad Company
360 has received in lieu thereof the indemnity lands certified to the State of Iowa therefor.

That it appears from the record and files of this office that the State of Iowa settled with the United States for its bona-fide purchasers under the resolution of 2d March, 1861; and in that settlement the State of Iowa did not claim, and did not include, the odd sections of lands within the limits of the railway grant of 1856, which had been approved and certified to aid in the construction of railroads, but conceded that the title of the railway companies under that grant to the lands above the Raccoon Forks was not referred to in said resolution.

In testimony whereof I have hereunto set my hand and affixed my official seal this 22 day of October, A. D. 1870.

[SEAL.] C. C. CARPENTER, *Register.*
By JOHN M. DAVIS, *Deputy.*

(Endorsed as follows:) Iowa Homestead Company vs. The Des Moines Navigation and Railroad & other'. Exhibit No. 17. Certificate of register State land office. Exhibit 17 of pl'ff.

361 "EXHIBIT 18."

For the purpose of effecting and adjustment between the State of Iowa and the General Government, the eleventh general assembly passed the following act:

An act providing for the adjustment of certain land claims with the General Government.

Whereas the excess of lands certified to the State over and above the amount it was entitled to receive under the act of Congress of September 4, 1841, known as the 500,000-acre grant, has not been reconveyed, nor satisfaction therefor rendered to the General Government; and

Whereas the lands falling to the State under the joint resolution of Congress of March 3d, 1861, entitled "Joint resolutions to quiet titles in the State of Iowa," and under the act of Congress entitled "An act confirming a land claim in the State of Iowa and for other purposes," approved July 12th, 1862, have not yet been certified or approved to the State; and

Whereas the claims of the State against the United States arising under the swamp-land grant remain, to a very great extent, in
362 an unsettled and unsatisfactory condition; and

Whereas the interests of the State and her grantees demand a speedy settlement of all said matters—therefore

SECTION 1. *Be it enacted by the general assembly of the State of Iowa,*

That Josiah A. Harvey, register of the State land office, be, and he hereby is, appointed a commissioner, on behalf of the State of Iowa, to adjust with the General Government all the matters and claims aforesaid.

SEC. 2. Said commissioner shall proceed to Washington City, and present said claims to the Department of the Interior, and urge the same to settlement as early and as speedily as may be consistent with the interest of the State, and he is hereby authorized to adjust the said excess of the 500,000 acre grant by permitting the United States to retain out of the indemnity land falling to the State under said act of Congress of July 12th, 1862, an amount equivalent to such excess: provided, that nothing herein contained shall be construed to be a relinquishment of the claim of the State, under the said 500,000-acre grant, to the
363 12,813 $\frac{51}{100}$ acres selected as a part of such grant, and subsequently rejected from a supposed conflict with the act of Congress approved August , 1846, known as the Des Moines River grant, and the said commissioner is hereby instructed to secure a restoration of said selections as a part of the 500,000-acre grant, and a confirmation of the title of the State thereto, as a part of such grant.

SEC. 3. As soon as the claim or claims or matters of difference under any one of said acts shall be adjusted, said commissioner shall report the same to the census board, setting forth the terms and mode of adjustment, and said board shall examine and pass upon said adjustment so presented, and the approval of a majority of said board shall make the settlement of said matters or claims final and binding upon the State of Iowa. Such approval shall be in writing signed by the members of said board agreeing thereto, and attested by the great seal of the State of Iowa.

SEC. 4. Said commissioner shall receive two dollars per day for
364 the time actually engaged in the discharge of the duties by this act imposed, with his necessary expenses in attending to the same, and his account for such time and expenses, made out from time to time or at the conclusion of his services as such commissioner, and sworn to by him, shall be presented to the census board for allowance, and if approved and allowed by them the auditor of state shall draw his warrant on the state treasurer, who shall pay the same out of the general revenue of the State.

SEC. 5. The amount of the expenses incurred and paid out of the treasury as provided in the preceding section, in carrying out the provisions of this act, shall be approved by the census board, as nearly as practicable pro rata among the parties receiving or entitled to receive the benefits resulting from the adjustment of said several matters with the General Government, and the amount thus apportioned shall be paid into the State treasury by such parties respectively before they shall be entitled to receive the proceeds or benefits of such settlement.

365 SEC. 6. All indemnity scrip received by the General Government, and all swamp lands patented to the State shall be conveyed to the counties to which they belong, and all money and indemnity scrip received from the Government shall be placed under the control of the board of supervisors of the several counties to which they belong, leaving the counties thereof, through their respective boards of supervisors to settle with their grantees.

SEC. 7. This act being deemed of immediate importance, shall take effect from and after its publication in the Iowa State Register, and the Iowa Homestead, newspapers published at Des Moines.

Approved March 30th, 1866.

By virtue of the provisions of this act, Mr. Harvey, as the commissioner for the State, proceeded to Washington, effected a settlement with the General Government of the Des Moines River lands, and the excess selections of the 500,000-acre grant, and reported the same to the census board, which settlement was approved by said board.

366 EXHIBIT 19 OF PL'FF.

U. S. C. C., D. Iowa.

THE IOWA HOMESTEAD COMPANY
vs.
THE DES MOINES NAVIGATION & R. R. CO. & others.

Part of the report of A. B. Miller, register of State land office, made to legislature of Iowa, November 7, 1859.

"The following table will show the number of acres of the lands up to the present date which were selected according to the provisions of the act of Congress of 15 May, 1856, and legislature of Iowa of 14 July, 1851, in relation to said road grants.

DUBUQUE AND PACIFIC RAILROAD COMPANY.

	6-mile limit.	15-mile limit.	Total.
Dubuque land district	2,361,08 *a*	5,901.49 *a*	8,262.37
F't Dodge " "	103,341.61	210,722.48	314,064.09
Sioux City " "	344,225.20	480,929.21	825,154.41
Aggregate to D. & P. R. R. Co			1,147,481.07

367 EXHIBIT 20 OF PL'FF.

Articles of incorporation of the Iowa Homestead Company, State of Iowa.

The subscribers do hereby associate themselves under the general laws of the State of Iowa, relating to corporations for "pecuniary profit," and do, for themselves, their successors, and assigns adopt the following articles of incorporation, to wit:

ARTICLE 1ST.—*Name and place.*

The name of this association shall be the "Iowa Homestead Company," and its principal place of business the city "Dubuque."

ARTICLE 2ND.—*Business.*

The business of the company shall be to buy, sell, lease, and make improvements upon lands in said State.

368 ARTICLE III.—*Capital stock.*

The capital stock of said company shall be one million dollars, in shares "one hundred dollars each," payable sixty days after the subscription therefor, in cash or in land, at a valuation agreed on by the board of directors, and the shares shall be deemed personal estate, and be transferable only on the books of the company, by assignment and surrender of the certificate.

ARTICLE 4TH.—*Duration and dissolution.*

Said company shall commence business on the fifteenth day of June, 1864, and shall terminate on the same day of June, 1884. A dissolution of said company, prior to the termination hereby provided, may take place by the consent of the holders of two-thirds of the whole stock.

369 ARTICLE 5TH.—*Board of directors.*

The affairs of said company shall be conducted by a board of seven directors, except so far as herein reserved to the stockholders.

Said board shall be annually elected on the second Tuesday of May in each year, by the ballots of a majority in interest of the stockholders, each share being entitled to one vote; and the persons receiving the greatest number of votes shall be deemed chosen.

Until the first annual election said board shall consist of the following corporators, to wit, Frederick C. Gebhard, William D. Thompson, George J. Forrest, Joseph Tuckerman, Lucius Tuckerman, Morris K. Jessup and John B. Thompson.

The stockholders shall have power to make by-laws for said company, and to alter, amend, or repeal any or either of the same.

370 ARTICLE 6TH.—*Indebtedness.*

The indebtedness to which said company is at any time to subject itself, shall be, and hereby is, expressly confined to liabilities incurred for the necessary expenses of said company, for the purchase of additional lands, and for such improvements upon the corporate property, as may have been deemed advisable and expedient by the board of directors; and shall never exceed one hundred thousand dollars, being one-tenth of the capital stock.

ARTICLE 7TH.—*Liability of stockholders.*

The private property of stockholders shall not be liable for the debts of the company.

ARTICLE 8TH.—*Meeting of stockholders.*

371 Until the by-laws otherwise provide, a meeting of the stockholders may be held on two weeks' notice, by three subscribers hereto, previously published in a newspaper, at Dubuque.

Stockholder' may appear and vote by proxy, and the ballots of a majority in interest of the stockholders shall be necessary to any action at such meeting.

In witness whereof the subscribers respectively have hereunto set their hands, and stated their places of residence, and the number of shares subscribed by each, this sixth day of June, A. D. 1864.

Names.	Residence.
W. D. THOMPSON	New York.
FROST & FORREST	"
SCHUCHARDT & GEBHARD	"
JOS. TUCKERMAN	"
LUCIUS TUCKERMAN	"
JOHN B. THOMPSON	"
MORRIS K. JESSUP & CO.	"
EDWARD STIMSON	Dubuque.

Signed & sealed in the presence of

FREDERICK HINKLE.

372 SECTION 1ST.—*Annual and special meetings of the stockholders.*

The annual meetings of the stockholders shal' be held on the second Tuesday of May in each year after 1864, at the company's office in Dubuque. Special meetings, it necessary for the interests of the company, may be called by the board of directors, and shall be called by said board on the written application of the owner or owners of no less than 3,000 shares, but no special meeting shall be held except after two weeks' notice setting forth the object thereof, published by the secretary in a newspaper of Dubuque, and sent by him to each stockholder.

SECTION 2ND—*Regular and special meetings of the board of directors.*

There shall be a regular meeting of the board of directors at the company's office in New York on the second Monday of October and
373 on the second Monday of April in each year. Special meetings, if necessary for the interests of the company, may be called by the president, or three directors, after such notice to each director by the secretary, as said president or three directors shall direct.

SECTION 3D.—*Quorum and votes.*

No resolution of the board of directors shall be deemed a corporate act unless adopted by the votes in person of a majority of their whole number, nor shall any resolution passed at any meeting of the stockholders bind this company, unless there is a majority of the shares of stock voting at such meeting, either in person or by written proxy previously filed with the secretary. Each share shall be entitled to one vote.

SECTION 4TH.—*Board of directors.*

A board of seven directors shall be elected by the stockholders
374 at each annual meeting. Said directors shall hold their offices for one year, and until others are substituted. They may be removed, and the vacancies thereby arising shall be filled by the stockholders at any special meeting of the same.

Vacancies from any other cause may be filled by the board of directors for the remainder of the term. A stockholder who does not own at least one hundred shares of stock in his own right shall not be chosen a director, and when a director shall cease to thus hold said number of shares, his office shall be vacant.

Said board, if they shall deem it expedient, may, from time to time, declare dividends to the stockholders of any funds of the company, excepting such portion of said funds as may be deemed requisite for necessary expenses, re-investments, and improvements on the company's property.

Said board shall render an account at each annual meeting of
375 the stockholders, showing in detail the situation of the property, and financial affairs of the company, and shall render such an account at any special meeting of the same, if called upon by a majority in interest of the stockholders to do so.

Said board shall cause records to be kept of all the official doings at any meeting of the directors or stockholders; proceed, within a week after their election to the annual election of a president from their number, appoint a treasurer, and all other agents required by the business of

372 SECTION 1ST.—*Annual and special meetings of the stockholders.*

The annual meetings of the stockholders shal' be held on the second Tuesday of May in each year after 1864, at the company's office in Dubuque. Special meetings, if necessary for the interests of the company, may be called by the board of directors, and shall be called by said board on the written application of the owner or owners of no less than 3,000 shares, but no special meeting shall be held except after two weeks' notice setting forth the object thereof, published by the secretary in a newspaper of Dubuque, and sent by him to each stockholder.

SECTION 2ND—*Regular and special meetings of the board of directors.*

There shall be a regular meeting of the board of directors at the company's office in New York on the second Monday of October and
373 on the second Monday of April in each year. Special meetings, if necessary for the interests of the company, may be called by the president, or three directors, after such notice to each director by the secretary, as said president or three directors shall direct.

SECTION 3D.—*Quorum and votes.*

No resolution of the board of directors shall be deemed a corporate act unless adopted by the votes in person of a majority of their whole number, nor shall any resolution passed at any meeting of the stockholders bind this company, unless there is a majority of the shares of stock voting at such meeting, either in person or by written proxy previously filed with the secretary. Each share shall be entitled to one vote.

SECTION 4TH.—*Board of directors.*

A board of seven directors shall be elected by the stockholders
374 at each annual meeting. Said directors shall hold their offices for one year, and until others are substituted. They may be removed, and the vacancies thereby arising shall be filled by the stockholders at any special meeting of the same.

Vacancies from any other cause may be filled by the board of directors for the remainder of the term. A stockholder who does not own at least one hundred shares of stock in his own right shall not be chosen a director, and when a director shall cease to thus hold said number of shares, his office shall be vacant.

Said board, if they shall deem it expedient, may, from time to time, declare dividends to the stockholders of any funds of the company, excepting such portion of said funds as may be deemed requisite for necessary expenses, re-investments, and improvements on the company's property.

Said board shall render an account at each annual meeting of
375 the stockholders, showing in detail the situation of the property, and financial affairs of the company, and shall render such an account at any special meeting of the same, if called upon by a majority in interest of the stockholders to do so.

Said board shall cause records to be kept of all the official doings at any meeting of the directors or stockholders; proceed, within a week after their election to the annual election of a president from their number, appoint a treasurer, and all other agents required by the business of

the company, prescribe their duties, and fix their allowances; which officers and agents, so elected or appointed, said board may remove at their discretion.

SECTION 5TH.—*Officers.*

The president shall, when present, preside at all the meetings of the directors and stockholders and exercise general superintendence
376 over the affairs of the company.

The treasurer shall give bonds, with surety to the satisfaction of said board, for the faithful performance of his duties; keep proper books of account, land books, and register of sales, and have, under the direction of said board, the custody of all the funds of the company.

He shall also act as secretary and transfer agent, be custodian of the corporate seal, and keep a record of all the instruments to which he affixes the same. Said books, register, and records, shall be open to the inspection of any stockholder. All deeds and instruments ordered to be executed and all certificates of stock issued by said board shall be signed by the president and countersigned and sealed by the secretary.

SECTION 6TH.—*Transfer.*

377 Every assignment of the shares of said company shall be made and received, and the assignee shall thereby become an associate of this company, subject to all the provisions contained in the articles of incorporation thereof and in these by-laws.

The transfer shall be registered in the transfer-book, and, the old certificate being surrendered, shall be cancelled and a new one in like form shall be issued to the assignee.

GEORGE J. FORREST,
President.
JOHN B. THOMPSON,
Secretary & Treasurer.

Office, 139 Broadway, New York.

(Here follows map marked page 377.)

377*a* DES MOINES, *March 2d*, 1872.

GRANT & SMITH,
Davenport, Iowa.

GENTS: We have yours of the 28th, covering certificates of lands to the State for the use of the Dubuque and Sioux City Railroad Company. They are all right, and you have our consent to have them printed as a part of this record.

Yours,

THO. F. WITHROW.

377*b* EXHIBIT No. 21.

The following copies of the certificates under which the lands in controversy are claimed by the grantors of The Iowa Homestead Company were read in evidence by the plaintiff.

377*c* No. 33.] GENERAL LAND OFFICE, *Feb. 26th*, 1863.

I, J. M. Edmonds, Commissioner of the General Land Office, do hereby certify that the foregoing, on pages one to four, inclusive, is a true

and correct list of the tracts of land within the six-miles limits granted to the State of Iowa by the act of Congress approved the 15th of May, 1856, entitled An act making a grant of lands to the State of Iowa in alternate sections to aid in the construction of certain railroads in said State, being the vacant and unappropriated lands in the alternate sections designated by odd numbers for six sections in width on each side of the railroad "from the City of Dubuque to a point on the Missouri River near Sioux City, with a branch from the mouth of the Tete Des Morts to the nearest point on said road," known as the Dubuque and Sioux City (late Dubuque and Pacific) Railroad, within the State of Iowa; and they are now submitted for the approval of the Secretary of the Interior in accordance with the requirements of said act of the 15th of May, 1856, subject to all its conditions, and to any valid interfering rights which may exist to any of the tracts embraced in the foregoing list.

In testimony whereof I have hereunto subscribed my name and caused the seal of the General Land Office to be affixed, at the city of Washington, on the day and year first above written.

[L. S.] J. M. EDMONDS, *Commissioner.*

(Written in red ink on margin:) Making in the aggregate fifty-six thousand four hundred seventy-three acres and thirty-two hundredths of an acre.

DEPARTMENT OF THE INTERIOR, *April 7th*, 1863.

Approved, subject to the conditions and rights above mentioned.

J. P. USHER, *Secretary.*

377*d* No. 34.] GENERAL LAND OFFICE, *Feb. 26th*, 1863.

I, J. M. Edmonds, Commissioner of the General Land Office, do hereby certify that the foregoing, on pages one to two, inclusive, is a true and correct list of the tracts of land selected by the agent of the State of Iowa outside of the six and within the fifteen mile limits, under the act of Congress approved the 15th of May, 1856, entitled "An act making a grant of lands to the State of Iowa in alternate sections to aid in the construction of certain railroads in said State." The said selections being from the lands of the United States in the alternate sections designated by odd numbers most contiguous to the tier of sections within six sections in width on each side of the railroad "from the city of Dubuque to a point on the Missouri River near Sioux City, with a branch from the mouth of the Tete Des Morts to the nearest point on said road," known as "the Dubuque and Sioux City (late Dubuque and Pacific) Railroad, and being in lieu of the lands in the alternate sections designated by odd numbers within said six sections in width on each side of said road which the United States had legally sold, or to which the right of pre-emption had legally attached, prior to the period at which the right of the State inured under said
377*e* grant; and they are now submitted for the approval of the Secretary of the Interior, in accordance with the requirements of said act of the 15th of May, 1856, subject to all its conditions and to any valid interfering rights which may exist to any of the tracts embraced in the foregoing list.

In testimony whereof I have hereunto subscribed my name and caused the seal of the General Land Office to be affixed at the city of Washington, on the day and year first hereinabove written.

J. M. EDMONDS, *Commissioner.*

DEPARTMENT OF THE INTERIOR, *April 7th*, 1863.
Approved, subject to the conditions and rights above mentioned.
J. P. USHER, *Secretary.*

(Written in red ink on margin:) Making in the aggregate twenty-one thousand and sixty-one acres and ninety-one hundredths of an acre.

377*f* No. 43.] GENERAL LAND OFFICE, *October* 31*st* 1864.

I, J. M. Edmonds, Commissioner of the General Land Office, do hereby certify that the foregoing, on page one, is a true and correct list of the tracts of land within the six-mile limits granted to the State of Iowa by the act of Congress, approved the 15th of May, 1856, entitled "An act making a grant of lands to the State of Iowa in alternate sections to aid in the construction of certain railroads in said State," being the vacant and unappropriated lands in the alternate sections designated by odd numbers for six sections in width on each side of the railroad from the City of Dubuque to a point on the Missouri River near Sioux City, with a branch from the mouth of the Tete Des Morts to the nearest point on said road, known as The Dubuque and Sioux City (late Dubuque and Pacific) Railroad, within the State of Iowa, and they are now submitted for the approval of the Secretary of the Interior, in accordance with the requirements of said act of the 15th of May, 1856, subject to all its conditions, and to any valid interfering rights which may exist to any of the tracts embraced in the foregoing list.

In testimony whereof I have hereunto subscribed my name and
377*g* caused the seal of the General Land Office to be affixed, at the city of Washington, on the day and year first hereinabove written.

[L. S.] J. M. EDMONDS, *Commissioner.*

DEPARTMENT OF THE INTERIOR, *December* 13*th*, 1864.
Approved, subject to the conditions and rights above mentioned.
J. P. USHER, *Secretary.*

(Written in red ink on margin:) Making in the aggregate one hundred and fifty-nine acres and sixty hundredths of an acre.

377*h* I, Aaron Brown, register of the State land office of the State of Iowa, do hereby certify that the foregoing are true copies of the certificates affixed to supplemental lists numbered 33, 34, and 43 on file in this office, embracing the odd-numbered sections of land within the five-mile limits, of the Des Moines River, which were approved and certified to the State of Iowa, by the Department of the Interior, under act of Congress of May 15th, 1856, to aid in the construction of *of* a railroad from the city of Dubuque to a point on the Missouri River near Sioux City, with a branch from the mouth of the Tete Des Morts to the nearest point on said road, and that said lists embrace in the aggregate seventy-seven thousand six hundred and ninety-four and eighty-three hundredths of an acre, (77,694.83.)

In testimony whereof I have hereunto subscribed my name and affixed the seal of my office, this 26th day of February, 1872.

[SEAL.] AARON BROWN, *Register.*

378 Comes the plaintiff, October 23rd, 1870, and, by leave of court & consent of counsel, files the following amendment to his bill, to wit:

and correct list of the tracts of land within the six-miles limits granted to the State of Iowa by the act of Congress approved the 15th of May, 1856, entitled An act making a grant of lands to the State of Iowa in alternate sections to aid in the construction of certain railroads in said State, being the vacant and unappropriated lands in the alternate sections designated by odd numbers for six sections in width on each side of the railroad "from the City of Dubuque to a point on the Missouri River near Sioux City, with a branch from the mouth of the Tete Des Morts to the nearest point on said road," known as the Dubuque and Sioux City (late Dubuque and Pacific) Railroad, within the State of Iowa; and they are now submitted for the approval of the Secretary of the Interior in accordance with the requirements of said act of the 15th of May, 1856, subject to all its conditions, and to any valid interfering rights which may exist to any of the tracts embraced in the foregoing list.

In testimony whereof I have hereunto subscribed my name and caused the seal of the General Land Office to be affixed, at the city of Washington, on the day and year first above written.

[L. S.] J. M. EDMONDS, *Commissioner.*

(Written in red ink on margin:) Making in the aggregate fifty-six thousand four hundred seventy-three acres and thirty-two hundredths of an acre.

DEPARTMENT OF THE INTERIOR, *April 7th*, 1863.

Approved, subject to the conditions and rights above mentioned.

J. P. USHER, *Secretary.*

377*d* No. 34.] GENERAL LAND OFFICE, *Feb. 26th*, 1863.

I, J. M. Edmonds, Commissioner of the General Land Office, do hereby certify that the foregoing, on pages one to two, inclusive, is a true and correct list of the tracts of land selected by the agent of the State of Iowa outside of the six and within the fifteen mile limits, under the act of Congress approved the 15th of May, 1856, entitled "An act making a grant of lands to the State of Iowa in alternate sections to aid in the construction of certain railroads in said State." The said selections being from the lands of the United States in the alternate sections designated by odd numbers most contiguous to the tier of sections within six sections in width on each side of the railroad "from the city of Dubuque to a point on the Missouri River near Sioux City, with a branch from the mouth of the Tete Des Morts to the nearest point on said road," known as "the Dubuque and Sioux City (late Dubuque and Pacific) Railroad, and being in lieu of the lands in the alternate sections designated by odd numbers within said six sections in width on each side of said road which the United States had legally sold, or to which the right of pre-emption had legally attached, prior to the period at which the right of the State inured under said
377*e* grant; and they are now submitted for the approval of the Secretary of the Interior, in accordance with the requirements of said act of the 15th of May, 1856, subject to all its conditions and to any valid interfering rights which may exist to any of the tracts embraced in the foregoing list.

In testimony whereof I have hereunto subscribed my name and caused the seal of the General Land Office to be affixed at the city of Washington, on the day and year first hereinabove written.

J. M. EDMONDS, *Commissioner.*

DEPARTMENT OF THE INTERIOR, *April 7th*, 1863.
Approved, subject to the conditions and rights above mentioned.
J. P. USHER, *Secretary.*

(Written in red ink on margin:) Making in the aggregate twenty-one thousand and sixty-one acres and ninety-one hundredths of an acre.

377*f* No. 43.] GENERAL LAND OFFICE, *October* 31*st* 1864.

I, J. M. Edmonds, Commissioner of the General Land Office, do hereby certify that the foregoing, on page one, is a true and correct list of the tracts of land within the six-mile limits granted to the State of Iowa by the act of Congress, approved the 15th of May, 1856, entitled "An act making a grant of lands to the State of Iowa in alternate sections to aid in the construction of certain railroads in said State," being the vacant and unappropriated lands in the alternate sections designated by odd numbers for six sections in width on each side of the railroad from the City of Dubuque to a point on the Missouri River near Sioux City, with a branch from the mouth of the Tete Des Morts to the nearest point on said road, known as The Dubuque and Sioux City (late Dubuque and Pacific) Railroad, within the State of Iowa, and they are now submitted for the approval of the Secretary of the Interior, in accordance with the requirements of said act of the 15th of May, 1856, subject to all its conditions, and to any valid interfering rights which may exist to any of the tracts embraced in the foregoing list.

In testimony whereof I have hereunto subscribed my name and
377*g* caused the seal of the General Land Office to be affixed, at the city of Washington, on the day and year first hereinabove written.

[L. S.] J. M. EDMONDS, *Commissioner.*

DEPARTMENT OF THE INTERIOR, *December* 13*th*, 1864.
Approved, subject to the conditions and rights above mentioned.
J. P. USHER, *Secretary.*

(Written in red ink on margin:) Making in the aggregate one hundred and fifty-nine acres and sixty hundredths of an acre.

377*h* I, Aaron Brown, register of the State land office of the State of Iowa, do hereby certify that the foregoing are true copies of the certificates affixed to supplemental lists numbered 33, 34, and 43 on file in this office, embracing the odd-numbered sections of land within the five-mile limits, of the Des Moines River, which were approved and certified to the State of Iowa, by the Department of the Interior, under act of Congress of May 15th, 1856, to aid in the construction of *of* a railroad from the city of Dubuque to a point on the Missouri River near Sioux City, with a branch from the mouth of the Tete Des Morts to the nearest point on said road, and that said lists embrace in the aggregate seventy-seven thousand six hundred and ninety-four and eighty-three hundredths of an acre, (77,694.83.)

In testimony whereof I have hereunto subscribed my name and affixed the seal of my office, this 26th day of February, 1872.

[SEAL.] AARON BROWN, *Register.*

378 Comes the plaintiff, October 23rd, 1870, and, by leave of court & consent of counsel, files the following amendment to his bill, to wit:

Circuit court of the United States, district of Iowa.

THE IOWA HOMESTEAD COMPANY
vs.
THE DE' MOINE' NAVIGATION AND RAILROAD Company and others.

The plaintiff, by leave of the court, and agreement of counsel, amends his description of the property in dispute, by adding, after the first clause of the bill, the following words:

"The said lands in dispute and claimed by the De' Moine' Navigation and Railroad Company, and its assignees, are the odd sections in townships 86, 87, 88, ranges 27, 28, 29, & 30 west, which lie south of the second correction line, within five miles of the Des Moines River, and townships 89, 90, 91, & 92, ranges 28, & 29 east of the Des Moines River within five miles of the east branch thereof.

"The lands to which The Des Moines Valley Railroad Company make some claim are the odd-numbered sections in townships 89 & 90, ranges 28 & 29, which lie west of the Des Moines River and within five miles thereof."

GRANT & SMITH.

379 This amendment, being made to correct and simplify a description of the lands in controversy, is conceded to be true, without formal answer.

(Endorsed as follows:) The Iowa Homestead Company vs. The De' Moine' Navigation & Railroad Company & others. Amended description of property. Filed by consent. Oct. 23, 1870. George B. Corkhill, clerk.

380 Be it remembered that, upon the trial of the aforesaid issue between the said parties, the counsel for the plaintiff, to maintain and prove the said issue on his part, produced and read the following depositions of Aaron Brown, C. H. Booth, and Josiah A. Harvey; which said depositions were taken upon commissions duly issued out of said court, and said commissions and depositions are in words and figures following, to wit:

381 *Deposition of Aaron Brown.*

Circuit court of the United States, district of Iowa.

To J. S. CLARK, Des Moines, Polk County, State of Iowa, greeting:

Know ye that, in confidence of your prudence and fidelity, you have been appointed, and, by these presents, you are invested with full power and authority to examine C. C. Carpenter, on his corporal oath as a witness in a cause depending in the circuit court of the United States for the district of Iowa, wherein The Iowa Homestead Company is plaintiff, and The Des Moines Navigation and Railroad Company is defendant, on the part of the plaintiff, upon the interrogatories annexed to this commission; and, therefore, you are hereby commanded that, at certain days and places to be appointed by you for that purpose, you do cause the said C. C. Carpenter to come before you, and then and there examine him on oath upon the said interrogatories; that you propound

to the said witness the interrogatories and cross-interrogatories hereto annexed, and cause the same to be written out, and the
382 answer' thereto to be inserted immediately following the respective interrogations; that you cause the whole to be read over to the witness, and the same to be subscribed by him and duly sworn to before you; that you take said deposition in accordance with your certificate, which you will attach to the deposition of each separate witness, stating that it was subscribed and sworn to by the said witness at the time and place therein mentioned; that you then seal up the whole, including this commission, and the interrogatories hereto annexed, all enclosed in *on* envelope, and return the same to the clerk of the United States circuit court, at Des Moines, Iowa; that you endorse on the outside of said envelope thus directed, the title of the cause in which the deposition is to be used; and that execute this commission with all convenient speed.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this 25th day of January, 1871, and in the 95' year of the independence of the United States of America.

[SEAL] Attest: GEORGE B. CORKHILL,
Clerk United States Circuit Court, District of Iowa.

383 Circuit court of the United States for the district of Iowa.

THE IOWA HOMESTEAD COMPANY
vs.
THE DES MOINES NAVIGATION AND RAILROAD Company & others. } In equity.

The defendants in the above-entitled will take notice that, on the twenty-fifth (25th) day of January, 1871, a commission will be sued out of the clerk's office of said circuit court to take the deposition of C. C. Carpenter, register of State land office of the city of Des Moines, in Polk County, to be used in the trial of said cause; said commission will be directed to such commissioner as the court or any judge thereof, or the clerk, if authorized, may name; and hereto annexed are copies of the questions to be propounded to said witness.

Nov. 26, 1870.

GRANT & SMITH,
Pl'ff's Attorney'.

384 1st. int. What is your age, place of residence, and occupation; what office do you hold under the laws of Iowa; and have you under your control the records of lands granted to the State of Iowa under the acts of Congress of 8 August, 1846, 15 May, 1856, the resolutions of 2 March, 1861, and act of July, 1862?

Int. 2. Please furnish a list of the odd sections of land in townships 86, 87, 88, 89, & 90, ranges 27, 28, 29, & 30, east of the Des Moines River and west, south of the second correction line, which was certified to the State of Iowa, under Des Moines River grant of 8 August, 1846, under the letter of Secretary Stuart of 29 Oct., 1851, and of Secretary McLelland referring thereto?

Int. 3. Please also furnish a list of the odd sections of land in the same townships and ranges within five miles of the Des Moines River grant, which were certified to the State of Iowa under the railway grant of 15 May, 1856, or, if the list is the same in these townships, so declare and furnish only one list; and in that connection state at what

time these lands were first certified to the State under the railway grant of 15 May, 1856, and when finally certified as belonging to the railway grant?

385 Int. 4. Have you a lawful copy or original of the settlement of Josiah A. Harvey, as agent of the State of Iowa, and the Secretary of the Interior, under the resolutions of Congress of 2 March, 1861, and 12 July, 1862, as approved by the census board? If so, annex to your answer a certified and examined copy thereof.

Int. 5. Under what act of Congress were the odd sections in township 89 & 90, ranges 28 & 29, within five miles of the west side of the Des Moines River, certified and allowed to the State of Iowa—the act of 8 August, 1846, 15 May, 1856, 2 March, 1861, or 12 July, 1862? And if you answer they have been certified under the act of 15 May, 1856, as part of the Dubuque and Pacific Railroad grant, state whether they have ever been certified to or claimed by the State under any other act of Congress, or the State legislature, and whether or not they are included in the deed or grant from the State of Iowa to The Des Moines Valley Railroad Company.

Int. 6. If these odd sections on both sides of the Des Moines River were certified and allowed to the State of Iowa under the railway grant of 15 May, 1856, to aid in building the Dubuque and Pacific

386 Railroad, state if you know whether the State, in the settlement of Josiah A. Harvey, conceded the railway grant title under the act of May 15, 1856, to be good, and received in said settlement other lands in lieu thereof, and whether or not these other lands are included in the special certificates dated 25 April, 1865, for 297,603.74 acres.

Int. 7. Who made the selection of lands named in said certificates; of what railroad company was he the agent? And state whether or not he knew that in said Harvey's settlement the title under the railway grant of 15 May, 1856, was conceded by the State to be good in its whole extent to the odd sections above named on both sides of the Des Moines River, and other lands included in said certificates in lieu thereof; when the settlement was made, and when he located the same. Please furnish separate lists of the lands approved to the State in said settlement under the resolution of 2 March, 1861, and the indemnity lands located under said certificate of 25 March, 1863.

Int. 8. If any part of N. W. ¼ sec. 5, T. 90, R. 29 west, was not included in the railway grant, *and* state why, and for what purpose, and for whose benefit.

387 (Endorsed as follows:)

Service accepted, January 9, 1871.

NOURSE AND KAUFFMAN,
J. M. ELLWOOD,
Att'ys of Record for certain Defendants.

Circuit court of the United States for the district of Iowa.

THE IOWA HOMESTEAD COMPANY
vs.
THE DES MOINES NAVIGATION AND RAILROAD Company & others. } In equity.

The defendants in the above-entitled cause will take notice that, on

the twenty-fifth (25th) day of January, 1871, a commission will be sued out of the clerk's office of said circuit court to take the deposition of
C. C. Carpenter, of the city of Des Moines, in Polk County, reg-
388 ister of the State land office, to be used in the trial of said cause.
Said commission will be directed to such commissioner as the court or any judge thereof, or the clerk, if authorized, may name; and hereto annexed are copies of the questions to be proposed to said witness.

GRANT & SMITH,
Pl'ff's Att'ys.

Quest. 1. What is your age, place of residence, and occupation; what office do you hold under the laws of Iowa; and have you under control the records of lands granted to the State of Iowa under the acts of Congress of 8 Aug. 1846, 15 May, 1856, the resolution of 2 March, 1861, and act of 12 July, 1862?

2. Please furnish a list of the odd sections of land in townships 86, 87, 88, 89, & 90, ranges 27, 28, 29, & 30, east of the Des Moines River and west, of the second correction line, which was certified to the State of Iowa under Des Moines River grant of 8 Aug., 1846, under the letter of Secretary Stuart of 29 of Oct. 1851, and of Secretary McLelland referring thereto.

3. Please also furnish a list of the odd sections of land in the same townships and ranges within five miles of the Des Moines River
389 grant, which were certified to the State of Iowa under the railway grant of 15th of May, 1856, or if the list is the same in these townships so declare, and furnish only one list; and in the connection state at what time these lands were first certified to the State under the railway grant of 15 May, 1856, and when finally certified as belonging to the railway grant.

4. Have you a lawful copy or original of the settlement of Josiah A. Harvey, as agent of the State of Iowa, and the Secretary of the Interior under the resolutions of Congress of 2 March, 1861, and 12 July, 1862, as approved by the census board? If so, annex to your answer a certified and examined copy thereof.

5. Under what act of Congress were the odd sections in townships 89 & 90, ranges 28 & 29, within five miles of the west side of the Des Moines River, certified and allowed to the State of Iowa—the act of August 8, 1846, 15 May, 1856, 2 March, 1861, or 12 July, 1862? And if you answer that they have been certified under the act of 15 May, 1856, as part of the Dubuque and Pacific Railroad grant, state whether they have ever been certified to, or claimed by the State under any
390 other act of Congress or the State legislature, and whether or not they are included in the deed or grant from the State of Iowa to The Des Moines Valley Railroad Company.

6. If these odd sections on both sides of the Des Moines River were certified and allowed to the State of Iowa under the railway grant of 15 May, 1856, to aid in building the Dubuque and Pacific Railroad, state if you know whether the State, in the settlement of Josiah A. Harvey, conceded the railway-grant title under the act of 15 May, 1856, to be good and received in said settlement other lands in lieu thereof, and whether or not these other lands are included in the special certificate dated 25 April, 1865, for 297,603.74 acres?

7. Who made the selection of lands named in said certificate; of what railroad company was he the agent? And state whether or not he knew that in said Harvey's settlement the title under the railway grant

of 15 May, 1856, was conceded by the State to be good in its whole extent to the odd sections above named on both sides of the Des Moines River, and other lands included in said certificate in lieu thereof, when the settlement was made, and when he located the same. Please
391 furnish separate lists of the lands approved to the State in said settlement under the resolutions of 2 March, 1861, and the indemnity-lands located under said certificate of 25 March, 1863.

8. If any part of N. W. ¼, sec. 5, T. 90, R. 29 west was not included in the railway grant, *and* state why, and for what purpose, and for whose benefit.

I acknowledge service of foregoing notice and copy of interrogatories, and object to each of interrogatories propounded by plaintiff to witness C. C. Carpenter from int. 2 to int. 8 inclusive, because each of said interrogatories No. 2, No. 3, No. 4, No. 5, No. 6, No. 7, and No. 8 are irrelevant and incompetant in matter, because each of the same are leading in form.

Jan'y 9, 1871.

H. STRONG,
Att'y for D. V. R. R. Co.

392 Cross-interrogatories filed by the clerk.

1. Are you, directly or indirectly, interested in this action? And if interested, explain the interest you have.

2. Are all your statements in the foregoing answers made from your personal knowledge? And if not, do your answers show what are made from your personal knowledge, and what from information, and the source of that information? If not, now show what is from information, and give its source.

3. State everything you know concerning the subject of this action favorable to either party.

(Endorsed as follows:) Iowa Homestead Co. vs. Des Moine' Nav. & R. R. Co. Notice to take deposition of C. C. Carpenter. Filed Jan. 25, 1871. George B. Corkhill, clerk.

393 In the United States circuit court.

THE IOWA HOMESTEAD CO.
vs.
DES MOINES NAV. AND R. R. CO.

Deposition of a witness produced, and sworn, and examined at my office in Des Moines, Polk Co., Iowa, before me, J. S. Clark, a United States commissioner, in pursuance of the annexed commission to me directed in an action now pending in the United States circuit court, district of Iowa, wherein The Iowa Homestead Company is plaintiff and The Des Moines Navigation and Railroad Company is defendant, on behalf of the plaintiff.

AARON BROWN, register State land office for the State of Iowa, being produced, sworn, and examined on the plaintiff, deposed as follows:

Int. 1. What is your age, place of residence, and occupation?
394 What office do you hold under the laws of Iowa, and have you, under your control, the records of lands granted the State of

Iowa, under the acts of Congress of 8 Aug., 1846, 15 May, 1856, the resolution of 2 March, 1861, and act of July 12, 1862?

Ans. 1. My age is forty-eight years; residence Des Moines, Iowa. I hold the office of register of the State land office, under the laws of Iowa, and have, under my control, the "certified lists" of lands granted to the State of Iowa, under the acts of Congress of 8 August, 1846, 15 May, 1856, the resolutions of 2 March, 1861, and act of Congress, 12 July, 1862.

Int. 2. Please furnish a list of the odd sections of land in townships 86, 87, 88, 89, & 90, ranges 27, 28, 29, & 30, east of the Des Moines River and west, south of the second correction line, which was certified to the State of Iowa, under Des Moines River grant of 8 August, 1846, under the letter of Secretary Stuart of 29 Oct., 1851, and of Secretary McLelland referring thereto.

Ans. 2. The following is a full and complete list of lands in the odd-numbered sections in townships 86, 87, 88, 89, and 90, north of
395 ranges 27, 28, 29, and 30 west of the 5th p. m., from the original lists in my office, situate on the east and west sides of the Des Moines River, and north and south of the second correction line, which were certified to the State of Iowa by Secretary Alex. H. H. Stuart, March 10th, 1852, and by Secretary R. McClelland, Dec. 16th, 1853, under act of Congress of 8 August, 1846. As construed by the Secretary of the Treasury in his letter of 2 March, 1849, and by the Secretary of the Interior in his letter of Oct. 29, 1851, the 2d correction line is the north boundary of township eighty-eight. The first column of this list shows the lands certified as aforesaid; the second column of the list exhibits those portions of the aforesaid lands which were subsequently, to wit, April 7, 1863, certified to the State of Iowa, under the railroad grant of Congress of May 15, 1856.

FIRST COLUMN.					SECOND COLUMN.		
Certified under D. M. grant.					Certified as R. R. land.		
Parts of section.	S.	T.	R.	Acres.	Parts of section.	Acres.	Railroad limits.
396 E. ¼ S. E., S. W. S. E., lots 5, 6, 7, 8	1	86	27	326.39			Iowa Central Air-line Railroad.
All	3	86	27	574.46			" " " " "
All	5	86	27	627.58			" " " " "
All	7	86	27	629.60			" " " " "
All	9	86	27	640.00			" " " " "
N. hf	11	86	27	320.00			" " " " "
All	13	86	27	640.00	All	640.	" " " " "
All	15	86	27	630.00			" " " " "
All	17	86	27	640.00			" " " " "
All	19	86	27	632.60	All	632.60	" " " " "
All	21	86	27	596.88	All	596.88	" " " " "
All	23	86	27	640.00	All	640.00	" " " " "
All	25	86	27	640.00	All	640.00	" " " " "
All	27	86	27	591.16	All	591.16	" " " " "
All	29	86	27	640.00	All	640.00	" " " " "
All	31	86	27	634.72	All	634.72	" " " " "
All	33	86	27	640.00	All	640.00	" " " " "
All	35	86	27	640.00	All	640.00	" " " " "
N. hf., E. hf. S. E	1	87	27	426.44	N. ¼, E. ¼ S. E. ¼	426.44	Dubuque & Sioux City Railroad.
All	3	87	27	673.90	All	673.90	" " " " "
All	5	87	27	681.60	All	681.60	" " " " "
W. ½ and S. E. ¼	7	87	27	444.30	W. ½ & S. E. ¼	444.30	" " " " "
S. ½	9	87	27	320.00	S. ½	320.00	" " " " "
W. ½	11	87	27	320.00	W. ½	320.00	" " " " "
Lots 1, 2, 5, 6, 7, 8, E. ½ N. E., S. W. N. W., W. ½ S. W.	15	87	27	472.80			" " " " "
All	17	87	27	611.25			" " " " "
397 All	21	87	27	587.82			" " " " "
Lots 1, 2, 3, & S. W. S. W	23	87	27	121.00			" " " " "
E. ½	27	87	27	320.00			" " " " "
W. ½	33	87	27	320.00			" " " " "
All	35	87	27	640.00			" " " " "
S. W. N. W., W. ½ S. W	3	88	27	120.00	S. W. N. W., W. ½ S. W	120.00	" " " " "
All	5	88	27	701.30	All	701.30	" " " " "
All	7	88	27	598.86	All	598.86	" " " " "
All	9	88	27	640.00	All	640.00	" " " " "
W. ½, W. ½ N. E., W. ½ S. E	15	88	27	480.00	W. ½, W. ½ N. E., W. ½, S. E	480.00	" " " " "
All	17	88	27	640.00	All	640.00	" " " " "
All	19	88	27	599.10	All	599.10	" " " " "
All	21	88	27	640.00	All	640.00	" " " " "
S. ½, S. ½ N. E., S. ½ N. W	23	88	27	480.00	S. ½, S. ½ N. E., S. ½ N. W	480.00	" " " " "
All	25	88	27	640.00	All	640.00	" " " " "

All	27	88	27	640.00	N. ¼, N. ½ S. W., S. W. S. W., N. W. S. E	480.00	"	"	"	"
All	29	88	27	640.00	All	640.00	"	"	"	"
E. ½, N. E., W. ½ N. W., S. W. ¼	31	88	27	285.28	E. ½, N. E., W. ½ N. W., S. W. ¼	285.28	"	"	"	"
All	33	88	27	640.00	All	640.00	"	"	"	"
All	35	88	27	640.00	N. ½ S. E., N. ½ S. W., N. ½	480.00	"	"	"	"
W. ½, W. ½ N. E., S. E. ¼	19	89	27	583.92	W. ½, W. ½ N. E., S. E. ¼	583.92	"	"	"	"
S. ½, S. W.	21	89	27	80.00	S. ½ S. W.	80.00	"	"	"	"
S. ½ N. W., S. W. ¼, W. ½ S. E., S. E. S. E.	27	89	27	360.00	S. ½ N. W., S. W. ¼, W. ½ S. E., S. E. S. E.	360.00	"	"	"	"
All	29	89	27	640.00	All	640.00	"	"	"	"
All	31	89	27	663.72	All	663.72	"	"	"	"
398 All	33	89	27	640.00	All	640.00	"	"	"	"
W. ½ N. W., S. E. N. W., S. W ¼, W. ½ S. E	35	89	27	360.00	W. ½ N. W., S. E. N. W., S. W. ¼, W. ½ S. E	360.00	"	"	"	"
E. ½, N. ½ N. W., N. E. S. W	1	83	28	352.25	E. ½, N. E. N. W., N. E. S. W	352.25	"	"	"	"
All	1	84	28	696.26	All	696.26	"	"	"	"
E. ½ N. E	11	84	28	80.00	E ½ N. E	80.00	"	"	"	"
E. ½, E. ½ N. W., E. ½ S. W	13	84	28	480.00	E ½, E ½ N. W., E. ½ S. W	480.00	"	"	"	"
All	25	84	28	640.00	All	640.00	"	"	"	"
All	1	85	28	645.60	All	645.60	"	"	"	"
E. ½	11	85	28	320.00	E. ½	320.00	"	"	"	"
All	13	85	28	640.00	All	640.00	"	"	"	"
E. ½ N. E., E. ½ S. E., S. W. S. E.	23	85	28	200.00	E. ½ N. E., E. ½ S. E., S. W. S. E	200.00	"	"	"	"
All	25	85	28	640.00	All	640.00	"	"	"	"
E. ½	35	85	28	320.00	E. ½	320.00	"	"	"	"
All	1	86	28	627.88			"	"	"	"
N. ½, N. E. S. W., S. E	3	86	28	503.02			"	"	"	"
All	11	86	28	640.00			"	"	"	"
All	13	86	28	640.00			Iowa Central Air-line Railroad.			
E. ½, N. E., E. ½ S. E	15	86	28	160.00	E. ½ N. E., E. ½ S. E. ¼	160.00	"	"	"	"
All	23	86	28	640.00	All	640.00	"	"	"	"
All	25	86	28	640.00	All	640.00	"	"	"	"
E. ½ N. E., E. ½ S. E	27	86	28	160.00	E. ½ N. E., E. ½ S. E. ¼	160.00	"	"	"	"
All	35	86	28	640.00	All	640.00	"	"	"	"
All	1	87	28	622.58	All	622.58	Dubuque & Sioux City Railroad.			
N. ½, S. W. ¼	3	87	28	518.28	W. ½ N. E. ¼	518.28	"	"	"	"
All	5	87	28	673.98	All	673.98	"	"	"	"
All	7	87	28	621.98	All	621.98	"	"	"	"
399 All	9	87	28	640.00	All	640.00	"	"	"	"
W. ½, S. E. ¼	11	87	28	480.00	W. ½, S. E. ¼	480.00	"	"	"	"
All	13	87	28	640.00			"	"	"	"
All	15	87	28	640.00			"	"	"	"
All	17	87	28	640.00			"	"	"	"
All	21	87	28	640.00			"	"	"	"
All	23	87	28	640.00			"	"	"	"
All	25	87	28	640.00			"	"	"	"
All	27	87	28	640.00			"	"	"	"
N. ½ N. E., S. E. N. E., N. E. S. E	29	87	28	160.00			"	"	"	"
N. E. ¼, N. E. N. W., N. ½ S. E., S. E. S. E	33	87	28	320.00			"	"	"	"
All	35	87	28	640.00			"	"	"	"
All	1	88	28	709.10	All	709.10	"	"	"	"
All	3	88	28	719.64	All	719.64	"	"	"	"
N. ½, lot 4	5	88	28	439.87	N. ½, lot 4	439.87	"	"	"	"
S. E. ¼	7	88	28	160.00	S. E. ¼	160.00	"	"	"	"

FIRST COLUMN.					SECOND COLUMN.		
Certified under D. M. grant.					Certified as R. R. land.		Railroad limits.
	Parts of section.	S.	T.	R.	Acres.	Parts of section.	Acres.	
	All	9	88	28	640.00	All	640.00	Dubuque & Sioux City Railroad.
	S. W. ¼, S. ½ N. W	11	88	28	240.00	S. ½ N. W., S. W	240.00	" " " "
	N. ½, S. E. ¼	13	88	28	480.00	N. ½, S. E. ¼	480.00	" " " "
	All	15	88	28	599.68	All	599.68	" " " "
	N. ½, S. E., E. ½ S. W	17	88	28	510.55	N. ½, S. E., E. ½ S. W	510.55	" " " "
	W. ½, S. E. ¼, W. ½ N. E	19	88	28	541.58	S. ½, N. W., W. ½ N. E	541.58	" " " "
	N. ½	21	88	28	320.00	N. ½	320.00	" " " "
	All	23	88	28	606.68	All	606.68	" " " "
	W. ½	25	88	28	320.00	W. ½	320.00	" " " "
	All	27	88	28	619.88	All	619.88	" " " "
400	All	29	88	28	640.00	All	640.00	" " " "
	All	31	88	28	619.08	All	619.08	" " " "
	S. W. ¼	33	88	28	160.00	S. W	160.00	" " " "
	All	35	88	28	593.25	Lots 3, 4, 5, 6, N. ½, W. ¼ S. W., N. E. S. E.	593.25	" " " "
	W. ½, S. W. N. E., W. ½ S. E	1	89	28	414.03	W. ½, S. W. N. E., W. ½ S. E	414.03	" " " "
	All	3	89	28	589.02	All	589.02	" " " "
	All	5	89	28	606.16	All	606.16	" " " "
	All east of river	7	89	28	312.99	Lots 1, 2, 3, 4, 5, 6, N. E. N. E	312.99	" " " "
	All	9	89	28	640.00	All	640.00	" " " "
	All	11	89	28	640.00	All	640.00	" " " "
	W. ½, W. ½ N. E., W. ½ S. E., S. E. S. E	13	89	28	520.00	W. ½, W. ½ N. E., W. ½ S. E., S. E. S. E	520.00	" " " "
	All	15	89	28	640.00	All	640.00	" " " "
	All	17	89	28	640.00	All	640.00	" " " "
	All	21	89	28	640.00	All	640.00	" " " "
	All	23	89	28	640.00	All	640.00	" " " "
	All	25	89	28	640.00	All	640.00	" " " "
	All	27	89	28	640.00	All	640.00	" " " "
	All	29	89	28	358.21	Lots 1, 2, 3, 4, N. E., E. ½ N. W., N. W. N. W	455.91	" " " "
	All (fr)	31	89	28	1.41	Lot 1	1.41	" " " "
	All	33	89	28	640.00	All	640.00	" " " "
	All	35	89	28	640.00	All	640.00	" " " "
	W. ½, W. ½ N. E., W. ½ S. E	1	90	28	469.75			" " " "
	All	3	90	28	642.18			" " " "
	All	5	90	28	638.94			" " " "
	All	7	90	28	640.54	All	640.54	" " " "
	All	9	90	28	640.00	All	640.00	" " " "
401	All	11	90	28	640.00	S. ½	320.00	" " " "
	W. ½ N. W	13	90	28	80.00	W. ½ N. W	80.00	" " " "
	All	15	90	28	640.00	All	640.00	" " " "
	All	17	90	28	640.00	All	640.00	" " " "
	All	19	90	28	640.13	All	640.13	" " " "

All	21	90	28	640.00	All	640.00	"	"	"	"
All	23	90	28	640.00	All	640.00	"	"	"	"
S. W. N. W., W. ½ S. W	25	90	28	120.00	W. ½ S. W., S. W. N. W	120.00	"	"	"	"
All	27	90	28	640.00	All	640.00	"	"	"	"
All	29	90	28	640.00	All	640.00	"	"	"	"
All	31	90	28	490.27	All	490.27	"	"	"	"
All	33	90	28	640.00	All	640.00	"	"	"	"
All	35	90	28	640.00	All	640.00	"	"	"	"
All	19	89	28	446.84	All	446.84	"	"	"	"
All	1	87	29	668.16	All	668.16	"	"	"	"
N. E. N. E	3	87	29	46.90	N. E. N. E	44.42	"	"	"	"
All	1	88	29	679.73	All	688.39	"	"	"	"
All	3	88	29	733.18	All	727.92	"	"	"	"
All	5	88	20	740.10	All	733.08	"	"	"	"
All	7	88	29	613.28	All	612.48	"	"	"	"
All	9	88	29	640.00	All	640.00	"	"	"	"
All	11	88	29	640.00	All	640.00	"	"	"	"
All	13	88	29	640.00	All	640.00	"	"	"	"
All	15	88	29	610.00	All	640.00	"	"	"	"
All	17	88	29	640.00	All	640.00	"	"	"	"
All	21	88	29	640.00	All	640.00	"	"	"	"
402 All	23	88	29	640.00	All	640.00	"	"	"	"
All	25	88	29	640.00	All	640.00	"	"	"	"
All	27	88	29	640.00	All	640.00	"	"	"	"
N. ½ N. E	29	98	29	80.00	N. ½ N. E	80.00	"	"	"	"
All	35	88	29	640.00	All	640.00	"	"	"	"
Lots 1, 2, 3, & S. E. S. E	1	89	29	149.10	Lots 1, 2, 3, & S. E. S. E	141.10	"	"	"	"
Lot 1	1	90	29	4.15	Lot 1	4.15	"	"	"	"
Lots 1, 2, 3, 4, S. E. N. E., S. E. ¼	13	90	29	406.90	Lots 1, 2, 3, 4, S. E. N. E., S. E. ¼	406.84	"	"	"	"
Lots 1 & 2	25	90	29	73.88	Lots 1 & 2	73.88	"	"	"	"
E. ½ N. E., E. ½ S. E	1	88	30	186.55	E. ½ N. E., E. ½ S. E	186.56	"	"	"	"

403 Int. 3. Please also furnish a list of the odd sections of land in the same townships and ranges, within five miles of the Des Moines River grant, which were certified to the State of Iowa under the railway grant of 15th of May, 1856; or, if the list is the same in these townships, so declare, and furnish only one list. And, in this connection, state at what time these lands were first certified to the State under the railway grant of 15 May, 1856, and when finally certified as belonging to the railway grant.

Ans. 3. The following is a list of lands in townships 89 and 90, of ranges 28 and 29, situate on the west side of the Des Moines River, which certified under the railroad grant of May 15th, 1856, but not under the grant of August 8, 1846, to wit:

	Parts of sections.	S.	T.	R.	Acres.
	Fr. west of river	31	90	28	96.27
	Lots 5, 6, 7, 8, & 9	19	89	28	119.91
	All of fr. sec. W. of river	31	"	"	665.93
	Lots 7, 8, 9, 10, 11, and S. ½ of S. W. ¼	7	"	"	285.94
	Lots 4, 5, 6, 7, 8, N. W. ¼, & W. ½ of S. W. ¼	1	89	29	452.80
	All	3	"	"	627.90
	All	5	"	"	611.26
	E. ½	7	"	"	320.00
	All	9	"	"	640.00
404	All	11	89	29	640.00
	All	13	"	"	640.00
	All	15	"	"	640.00
	All	17	"	"	640.00
	N. E. of N. E. ¼	19	"	"	40.00
	All	21	"	"	640.00
	W. ½ *of* S. E. ¼	23	"	"	480.00
	All	25	"	"	640.00
	All	27	"	"	640.00
	E. ½	29	"	"	320.00
	All	33	"	"	640.00
	All	35	"	"	640.00
	All west of river	1	90	29	630.10
	All	3	"	"	481.80
	E. ½, S. ½ of N. W. ¼, & S. W. ¼	5	"	"	552.39
	E. ½, & E. ½ of N. W. ¼	7	"	"	400.00
	E. ½ of S. W. ¼, & S. W. ¼ of S. W. ¼	7	"	"	120.00
	All	9	"	"	640.00
	All	11	"	"	640.00
	Lots 5, 6, 7, & N. W. ¼ of N. W. ¼	13	"	"	640.00
	All	15	"	"	640.00
	All	17	"	"	640.00
	All	19	"	"	640.00
	All	21	"	"	640.00
	All	23	"	"	635.85
	Lots 3, 4, 5, 6, W. ½ of S. E. ¼, S. W. ¼, W. ½ of N. W. ¼, & S. E. ¼ of N. W. ¼	25	"	"	402.98
	W. ½ of N. W. ¼, & S. E. ¼ of N. W. ¼	"	"	"	120.00
405	All	27	90	29	640.00
	All	29	"	"	640.00
	E. ½, E. ½ of N. W. ¼, & E. ½ of S. W. ¼	31	"	"	480.00
	All	33	"	"	640.00
	All	35	"	"	640.00

The two foregoing lists embrace all of the odd sections of lands in townships 86, 87, 88, 89, & 90, of ranges 27, 28, 29, & 30, within the five-mile limits of the Des Moines River that have been certified to the State of Iowa, under the railroad grant of May 15, 1856, as appears by the certified lists in my office, and as shown by certified lists; the date of certification to the State in April 7, 1863. I have no knowledge of any former or subsequent certification of said lands under said grant of May 15, 1856.

Int. 4. Have you a lawful copy or original of the settlement of Josiah A. Harvey, as agent of the State of Iowa, and the Secretary of the Interior, under the resolutions of Congress of 2 March, 1861, and 12 July, 1862, as approved by the census board; if so, annex to your answer a certified and examined copy thereof.

406 Ans. 4. The original report of Josiah A. Harvey, commissioner on behalf of the State, of his settlement with the United States, to which you refer, is on file in the State land office, and of which the following is a true and correct copy:

WASHINGTON CITY, *May* 21, 1866.

Pursuant to the authority conferred by the act of the State of Iowa, approved March 30, 1866, "for the adjustment of certain land claims with the General Government," I, Josiah A. Harvey, register of the State land office, and as commissioner on behalf of the State, do hereby assent to the adjustment as herein stated, the said adjustment to be held as binding and conclusive on the said State as provided in said act.

JOSIAH A. HARVEY,
Register of the State Land Office and Commissioner on behalf of the State of Iowa.

WASHINGTON CITY, D. C., *May* 23, 1866.

To the honorable census board of the State of Iowa, Des Moines:

Pursuant to the requirements of chapter 79 of the acts of the 11th general assembly, I have the honor to report that I have con-
407 summated an adjustment with the United States, of the excess of lands received by the State under the grant of Sept. 4, 1841; also, the lands confirmed to the State by the joint resolution of March 2, 1861, and the lands falling to the State under the act of Congress of July 12th, 1862; and transmit herewith for your approval a copy of the agreement containing the terms of said adjustment.

It will be observed that the State in this settlement is credited with the whole amount of land in odd-numbered sections and lying within five miles of the Des Moines River from the Raccoon Fork to the northern boundary of the State, determined to be 558,004.06 acres.

The State is then charged with the several quantities of land following, to wit:

1st. Indemnity land selected under special certificate, dated April 25, 1863, 297,603.74 acres.

2nd. Remaining lands in place yet to be certified, 167,109.02 acres.

3rd. Lands in place confirmed by the joint resolution of March 2d, 1861, 44,838.64 acres.

4th. Lands selected and heretofore certified on the east fork
408 of the Des Moines River, and more than five miles from the western or main branch, 11,661.80 acres.

5th. The excess selected and approved to the State as a part of the 500,000-acre grant, under act of Sept. 4, 1841, 35,473.54 acres.

Making in all 556,686.74 acres, and leaving due to the State to balance the whole amount of the grant 1,310.32 acres.

For this balance a special certificate will be issued.

The 11,661.80 acres on the east branch of the Des Moines River, heretofore approved to the State as a part of the Des Moines River grant, and disposed of by the State as such, are held by the Department, under the decision of the Attorney General, to be a legitimate and proper offset to so much of this grant; hence they are charged to the State in this settlement.

The 35,473.54 acres charged in excess under the 500,000-acre grant (act 1841) includes the 22,660.05 acres over and above the 500,000 acres which is embraced in the book of diagrams approved and certified to

the State on the 12th of September, 1854, and which has hitherto been considered as the excess, and also the 12,813.51 acres which were once approved as a part of the 500,000-acre grant, and afterward
409 rejected, and *and* approved, and certified as a part of the Des Moines River grant. These lands have been known as the river school lands. Notwithstanding that they have been disposed of as a part of the Des Moines River lands by the State, said chapter 79 required that they shall be included and certified as a part of the grant of 1841.

Deeming it my duty to carry out the provisions of the law, regardless of my personal opinion as to their correctness or propriety, I have thus included these lands, thereby increasing said excess to 35,473.54 acres, and allowed them to be deducted from the amount of the Des Moines River grant, due the State, as the Department had determined.

The necessary and proper lists, according to the terms of this adjustment, will be made and approved by the Secretary, and delivered to me or sent to the State.

In the preparation of these lists, all lands which appear at the general land office as having been selected as swamp, under act of September 28, 1850, and all tract' to which pre-emption rights had attached prior to July 12, 1862, will be excluded.

410 If, however, any of the tracts thus listed and certified shall be found to have been duly selected under said act of September, 28, 1850, and shall be shown by legal investigation to be swamp or overflowed, or to belong to the State by said act, the Government will approve and certify other land, of like quantity, in lieu thereof.

This adjustment, which I think is fair and just, and should be satisfactory to the State, will, when approved by you, be a final settlement between the State of Iowa and the United States of all claims under the Des Moines River grant, as well as of the act of 1841, except so far as valid and legally subsisting adverse rights may be found to exist to any of the tracts thus approved to the State.

The excess of the 500,000-acre grant, (35,473.54 acres,) thus deducted, is, by an agreement between the State and The Des Moines Valley Railroad Company, (the beneficiary of the grant,) to be credited to said company, at the rate of one dollar and twenty-five cents per acre, in the satisfaction of claims against the State on account of the improvement of the Des Moines River. Said company should therefore be
411 credited on the claims they are under obligation to satisfy, with the sum of $44,341 67.

My authority extends only to settlement with the General Government. I have no power to carry out this agreement between the State and the company. It is but just, however, to say that this settlement has been made with the United States with the full understanding that this arrangment should be carried out.

The company, through its agents, has for a long time been laboring to this end. The opinion and decision of the Secretary of the Interior, a copy of which, accompanying Mr. Kilbourne's report made last winter, is herewith transmitted for your examination in connection with this adjustment, is the result of their efforts.

The labors of these agents (Messrs. Kilbourne & Mason) heretofore in the premises, have greatly relieved me, and enabled me to close up the settlement thus early. It is due the company that this credit be given as soon as possible.

I hope, therefore, that this entire arrangement will meet with your approbation, and that you will, as I think you have the right and may

safely do, fully consummate and carry it out by giving said company the benefit of said credit against said claims without delay.

Very respectfully submitted,

J. A. HARVEY, *Commissioner.*

412 *Adjustment of the Iowa Des Moines River grant, under the act of July 12th, 1862, and joint resolution of March 2d, 1861.*

DEBIT.	Acres.
The State of Iowa, with the quantity of indemnity lands selected und' special certificate, dated April 25, 1863..	207,603 74
The lands in place to be certified.....	167,109 02
The lands in place confirmed by joint resolution of March 2, 1861.....	44,838 64
The quantity selected on the east fork of the Des Moines River, and certified to the State under the original law of August 8th, 1846	11,661 80
The excess selected and approved to the State under the 500,000-acre grant of 1841	35,473 54
	556,686 74
Remaining indemnity due the State	1,317 32
	558,004 06

CREDIT.	
The State of Iowa, with the whole area of the grant above the Raccoon Fork.....	558,004 06

General Land Office, May 21, 1866.

J. M. EDMUNDS,
Commissioner General Land Office.

DEPARTMENT OF THE INTERIOR, *May* 22, 1866.

413 The adjustment, as herein stated, is hereby approved.

JA'S HARLAN, *Secretary.*

THE STATE OF IOWA, *ss:*

The within adjustment, as stated, is hereby approved by us for the State of Iowa.

June 20th, 1866.

W. M. STONE, *Governor,*
JAMES WRIGHT, *Sec. State,*
JOHN A. ELLIOTT, *Auditor,*
W. H. HOLMES, *Treasurer,*
Census Board.

The items in the annexed adjustment of 35,473.54 acres, being excess selections under the 500,000-acre grant to the State of Iowa, approved to the said State February 20, 1851, includes 12,813.51 acres, described as follows, to wit:

Parts of sections.	Sec.	Tp.	R.	Acres.
W. ½ of S. W. ¼	5	87	26	80.00
All of	7	87	26	597.92
N. ½ of	9	87	26	320.00
S. ½ of	15	87	26	320.00
All of	19	87	26	609.18
N. ½ of	21	87	26	320.00
W. ½ of	23	87	26	320.00
N. W. ¼	27	87	26	160.00
W. ½ of E. ½, and E. ½ of W. ½	29	87	26	320.00
All of	31	87	26	605.92
N. fr ½ of N. W. ¼, and lots 1, 2, 3, & 4	1	86	27	241.56
414 S. ½ of	11	86	27	320.00
W. ½ of S. E. ¼, and S. W. ¼	1	87	27	240.00
N. E. ¼	7	87	27	160.00
N. ½ of	9	87	27	320.00
E. ½ of	11	87	27	320.00
All of	13	87	27	640.00
Lots 3 and 4	15	87	27	113.90
All of	19	87	27	618.40
N. E. ¼, and N. E. ¼ of N. W. ¼	23	87	27	200.00
Lots 4, 5, 6, 7, 8, and E. ½ of S. E. ¼	23	87	27	275.50
All of	25	87	27	604.25
W. ½ of	27	87	27	320.00
All of	29	87	27	640.00
All of	31	87	27	626.44
E. ½ of	33	87	27	320.00
W. ½ of N. E. ¼, S. E. ¼, and E. ½ N. W. ¼	31	88	27	320.00
S. E. ¼	3	87	28	160.00
N. E. ¼	11	87	28	160.00
E. ½ of S. E. ¼, N. W. ¼ of S. E. ¼, and lot 1, 2, & 3	5	88	28	252.44
W. fr. ½ of section, and N. E. ¼	7	88	28	468.00
E. ½ of section, and N. ½ of N. W. ¼	11	88	28	400.00
S. W. ¼	13	88	28	160.00
W. ½ of S. W. ¼	17	88	28	80.00
E. ½ of N. E. ¼	19	88	28	80.00
S. ½ of	21	88	28	320.00
E. ½ of	25	88	28	320.00
N. ½ of section, and S. E. ¼	33	88	28	480.00
Total	.....	.....	.....	12,813.51

415 Subsequently to said approval, the above lands were deducted from the lists as improper selections, because found in conflict with the river grant of 1846.

The above action of the Department, rejecting the above 12,813.51 acres from the original lists, was disapproved by the Secretary of the Interior, under date of February 28, 1865; hence, and in view of the annexed adjustment, covering the whole amount of excess selected and approved in 1851, the title to said above-described lands is affirmed as enuring to the State of Iowa from the 20th February, 1851.

GENERAL LAND OFFICE, *May* 28, 1866.

The above is respectfully submitted to the Hon. Secretary of the Interior for his approval.

J. M. EDMUNDS, *Commissioner.*

DEPARTMENT OF THE INTERIOR, *May* 29, 1866.

Approved.

JA'S HARLAN, *Secretary.*

Filed in State land office August 2, 1866.

J. A. HARVEY, *Register.*

416 I, Aaron Brown, register of the State land office at Des Moines, Iowa, do hereby certify that I have compared the foregoing copy of the report of Josiah A. Harvey, commissioner on behalf of the State, of his settlement with the United States, with the original on file in my office, and find the same to be a true and correct copy.

In witness whereof I have hereunto set my hand and affixed the seal of my office this the 17th day of February, A. D. 1871.

[SEAL.] AARON BROWN, *Register of the State Land Office.*

Int. 5. Under what acts of Congress were the odd sections in townships 89 & 90, ranges 28 & 29, within five miles of the west side of the Des Moines River, certified and allowed to the State of Iowa—the act of 8 August, 1846, 15 May, 1856, 2 March, 1861, or 12 July, 1862? and, if you answer that they have been certified under the act of 15
417 May, 1856, as part of the Dubuque and Pacific Railroad grant, state whether they have ever been certified to or claimed by the State of Iowa, under any other act of Congress, or the State legislature; and whether or not they are included in the deed or grant from the State of Iowa to The Des Moines Valley Railroad Company.

Ans. 5. All of the lands in the odd-numbered sections in townships 89 & 90 of ranges 28 & 29, lying west of the Des Moines River, except the N. E. ¼ of section 23, and N. W. ¼ & E. ½ of S. W. ¼ of section 29, township 89, range 29, and the N. ½ of N. W. ¼ of section 5, township 90, range 29, were certified to the State of Iowa under the act of Congress, approved May 15, 1856, to aid in the construction of a railroad "from the city of Dubuque to a point on the Missouri River at or near Sioux City with a branch from the mouth of the Tete des Morts to the nearest point on said road," and have not been certified to the State of Iowa under any other grant, nor am I aware that the State claims them under any other act of Congress or of the legislature. I have furnished a list of said land in my answer to 2 and 3 interrogatories.

418 Int. 6. If these odd sections on both sides of the Des Moines River were certified and allowed to the State of Iowa under the railway grant of 15 May, 1856, to aid in building the Dubuque and Pacific Railroad, state if you know whether the State, in the settlement of Josiah A. Harvey, conceded the railway grant title under the act of 15 May, 1856, to be good, and received in settlement other lands in lieu thereof, and whether or not those other lands are included in the special certificate dated 25 April, 1865, for 297,603.74 acres.

Ans. 6. An examination of the files of the State land office tend to confirm my belief that, in the settlement of Josiah A. Harvey with the United States, it was conceded by the State that the odd-numbered sections within the five-miles limits of the Des Moines River, which had been certified to the State under the railroad grant of May 15, 1856, inured to the State under said grant, though as to whether the State considered its title good under said grant, I am unable to say. And further that the State received other lands in lieu of those odd sections certified under the grant of May 15, 1856, though perhaps not
419 all included in the special certificate dated April 25, 1863, for it appears that 35,473.54 acres of an excess which the State had received under the 500,000-acre grant of Sept. 4, 1841, were held by the State, and offset'ed against an equal amount of the indemnity due the State under act of July 12, 1862, and deducted therefrom in the settlement of Josiah A. Harvey with the United States.

Int. 7. Who made the selections of lands named in said certificate? Of what railroad company was he the agent? And state whether or not he knew that in said Harvey's settlement, the title under the railway grant of 15 May, 1856, was conceded by the State to be good in its whole extent to the odd sections above-named on both sides of the Des Moines River, and other lands included in said certificate in lieu thereof; when the settlement was made, and when he located the same? Please furnish separate lists of the lands approved to the State in said settlement under the resolution of 2 March, 1861, and the indemnity lands located under said certificate of 25 March, 1863.

420 Ans. 7. The lands selected in virtue of special certificate No. 1, dated April 25, 1863, were selected by D. W. Kilbourne, as appears from the files in my office; he was the agent of the State, appointed and commissioned by the governor, though of what railroad company he was the agent, or whether he was the agent of any company I do not know. From an examination of the report of D. W. Kilbourne to the governor of Iowa on file in my office, and from other evidence, I am led to believe that he was aware that, in Josiah A. Harvey's settlement with the United States, the State conceded that the odd sections within the five-miles limits of the Des Moines River, which had been certified to the State under the grant of May 15, 1856, inured to the State under said grant, though whether he knew that the State's title to said sections under said grant was conceded to be good, I am unable to state. I have no doubt, that when Mr. Kilbourne made the selections of indemnity lands in virtue of special certificate No. 1, dated April 25, 1863, he knew why, and for what reason the said indemnity was given.

421 I hereunto furnish true and correct copies of the lists of lands certified to the State of Iowa under the joint resolution of March 2, 1861; also, true and correct copies of the lists of indemnity lands selected by D W. Kilbourne, state agent, (in virtue of special certificate No. 1, issued by the Commissioner of the General Land Office, March 25, 1863,) and certified to the State under the provisions of the act of Congress of July 12, 1862, by the Interior Department, June 14, 1866. The lands embraced in these lists are the land' referred to in the settlement of Josiah A. Harvey, commissioner for the State of Iowa, with the General Government.

The following lists, marked A, B, and C, exhibit all of the Des Moines River lands in place which have been approved and certified to the State of Iowa under the joint resolution of Congress of March 2, 1861, and contain in the aggregate, 55,991.09 acres.

"A."—*A list of Des Moines River lands in place approved to the State June* 14, 1866, *under joint resolution of March* 2, 1861, *in Fort Des Moines district.*

422 Parts of sections.	S.	T.	R.	Acres.
All of	19	81	24	642.08
S. W. ¼ of S. W. ¼	21	81	24	40.00
All of	13	81	25	640.00
All of	15	81	25	640.00
All of	17	81	25	640.00
All of	19	81	25	676.30
E. ½ of	21	81	25	320.00
All of	23	81	25	640.00
All of	25	81	25	640.08
E. ½ N. E., and W. ½ N. W	27	81	25	160.07
S. ½	27	81	25	320.00
Lots 5, 6, 7, 8, and N. ½ N. E	29	81	25	268.30
All of	31	81	25	675.62
All of	33	81	25	561.25
All of	3	80	26	701.92
N. fr. ½ of sec. and S. E. ¼	5	80	26	538.78
N. E. ¼ S. W	5	80	26	40.00
N. ½ of sec. and S. E. ¼	9	80	26	480.00
E. ½ S. W	9	80	26	80.00
E. fr. ½ of sec. and E. fr. ½ N. W	25	81	26	385.42
S. W. ¼	25	81	26	160.00
All of	27	81	26	640.00
All of	29	81	26	640.00
N. E. ¼, N. E. ¼ N. W., E. ½ S. E., and N. W. S. E	31	81	26	320.00
All of	33	81	26	640.00
All of	35	81	26	640.00
E. ½ N. E	25	81	27	80.00
Total				13,209.83

423 Filed in State land office August 2, 1866.

"B."—*A list of Des Moines River land in place approved to State June* 14, 1866, *under joint resolution of March 2d*, 1861, *in Fort Dodge district.*

Parts of sections.	S.	T.	R.	Acres.
All of	3	86	26	625.92
All of	5	86	26	624.86
All of	7	86	26	606.82
All of	9	86	26	640.00
N. ½	15	87	26	320.00
All of	17	87	26	640.00
S. ½	21	87	26	320.00
W. ½ of S. E	23	87	26	80.00
E. ½ of sec. and S. W. ¼	27	87	26	480.00
E. ½ of E. ½, and W. ½ of W. ½	29	87	26	320.00
All of	33	87	26	640.00
All of	35	87	26	640.00
S. h'f S. E., N. E. S. E. and lots 5, 6, 7, 8	1	86	27	326.39
All of	3	86	27	574.46
N. fr. ½ of sec. & S. W. q'r	5	86	27	467.58
All of	7	86	27	629.60
All of	9	86	27	640.00
N. h'f	11	86	27	320.00
N. fr. h'f	15	86	27	310.65
N. h'f	17	86	27	320.00
424 E. h'f N. E., and S. W. N. W	15	87	27	120.00
Lots 1, 2, 5, 6, 7, and 8	15	87	27	272.80
W. h'f S. W	15	87	27	80.00
All of	17	87	27	611.25
All of	21	87	27	587.82
Lots 1, 2, 3, and S. W. S. W	33	87	27	121.00
E. h'f	27	87	27	320.00
W. h'f	33	87	27	320.00
All of	35	87	27	640.00
W. fr. h'f N. W	31	91	27	97.00
All of	1	86	28	627.88
N. fr. h'f sec., S. E. q'r, and N. E. S. W	3	86	28	503.02
All of	11	86	28	640.00
All of	13	86	28	640.00
All of	13	87	28	640.00
All of	15	87	28	640.00
All of	17	87	28	640.00
All of	21	87	28	640.00
All of	23	87	28	640.00
All of	25	87	28	640.00
All of	27	87	28	640.00
N. h'f N. E., S. E. N. E., and N. E. S. E	29	87	28	160.00
N. E. ¼, N. E. N. W., N. fr. S. E., and S. E. S. E	33	87	28	320.00
All of	35	87	28	640.00
W. fr. h'f sec., and W. fr. h'f of E. h'f	1	90	28	469.75
All of	3	90	28	642.18
All of	5	90	28	638.94
425 N. h'f	11	90	28	320.00
All of	3	91	28	627.42
All of	5	91	28	636.08
Lots 1 and 2, E. of riv	7	91	28	32.00
All of	9	91	28	640.00
All of	11	91	28	640.00
W. h'f N. E. and N. W. q'r	13	91	28	240.00
S. h'f	13	91	28	320.00
All of	15	91	28	640.00
All, east of river	17	91	28	626.60
Lots 1, 2, 3, 4	19	91	28	188.30
All of	21	91	28	640.00
All of	23	91	28	640.00
All of	25	91	28	640.00
All of	27	91	28	640.00
E. h'f sec., and lots 1, 2, 3, and 4	29	91	28	616.25
Lot 1, west of river	31	91	28	35.70
All of	33	91	28	640.00
All of	35	91	28	640.00
S. E. q'r	27	92	28	160.00
Lot 1, west of river	31	92	28	20.90
Lots 3, 4, and S. h'f of sec	33	92	28	427.65
W. h'f N. W. and W. h'f S. W	35	92	28	160.00
Total				32,628.82

Filed in State land office August 2, 1866.

426 "C."—*Lists of lands selected by the State of Iowa on the east fork of Des Moines River, under act of August 8, 1846, "for the improvement of the navigation of the Des Moines River," and confirmed by joint resolution of March 2, 1861.*

FORT DODGE DISTRICT.

No.	Parts of sections.	S.	T.	R.	Acres.
1	Fractional section	5	91	27	599.67
2	All of	7	91	27	668.54
3	All of	5	92	27	691.80
4	All of	7	92	27	658.24
5	All of	9	92	27	640.00
6	W. ½ of N. W. ¼	15	92	27	80.00
7	All of	17	92	27	640.00
8	All of	19	92	27	665.92
9	Lots 1, 2, W. ½ of N. E. ¼	21	92	27	305.10
10	And N. W. ¼				
11	All of	29	92	27	639.84
12	All of	31	92	27	668.68
13	All of	1	91	28	635.52
14	E. ½ of N. E. ¼	13	91	28	80.00
15	All of	1	92	28	690.80
16	N. E. fr. ¼, N. fr. ½ of N. W. ¼	3	92	28	564.44
17	S. E. ¼ of N. W. ¼, E. ½ of S. E. ¼				
18	N. W. ¼ of S. E. ¼, and lots 1, 2, and 3				
427					
19	N. ½ of sect	11	92	28	440.00
20	E. ½ of S. E. ¼, and N. W. ¼ of S. E. ¼				
21	All of	13	92	28	640.00
22	Lots No. 1 and 2	15	92	28	18.70
23	All of	23	92	28	640.00
24	All of	25	92	28	640.00
25	Lot No. 1	27	92	28	65.20
26	E. ½ of sec., E. of N. W. ¼	35	92	28	480.00
27	And E. ½ of S. W. ¼				
	Total				11,152.45

428 *List of lands selected as indemnity, under the act of July 12th, 1862, entitled "An act confirming a land grant to the State of Iowa, and for other purposes," as per special certificate No. 1, by D. W. Kilbourne, agent of the State of Iowa.*

SELECTED IN FORT DODGE DISTRICT.

Parts of section.	Sec.	Town.	R'ng.	Area.
		N.	W.	
S. ½ of sec	1	95	27	320.00
N. fr. ¼ of sec		"	"	370.76
All of	2	"	"	693.86
All of	3	"	"	690.90
All of	4	"	"	690.28
S. ½ of sec. & N. W. fr. ¼	5	"	"	504.23
S. fr. ½ of sec	6	"	"	320.00
All of	7	"	"	640.00
W. ½ of sec	8	"	"	320.00
S. E. ¼ & N. W. ¼	9	"	"	320.00
W. ½ of sec. & N. E. ¼	10	"	"	480.00
All of	11	"	"	640.00
All of	12	"	"	640.00
N. ½ of sec	14	"	"	320.00
W. ½ of sec	15	"	"	320.00
All of	17	"	"	640.00
All of sec	18	"	"	640.00
S. fr. ½ of sec	19	"	"	332.97
N. ½ of sec	20	"	"	320.00
429 N. fr. ½ of sec	1	96	27	320.00
All of fr. sect	2	"	"	640.00
All of fr. sect	3	"	"	640.00
S. ½ of sec	4	"	"	320.00
All of	5	"	"	640.00
S. E. ¼ & N. W. fr. ¼	6	"	"	320.00
E. ½ of sec. & N. W. fr. ¼	7	"	"	482.29
E. ½ of sec. & N. W. fr. ¼	8	"	"	480.00
N. ½ of sec. & S. W. ¼	9	"	"	480.00
E. ½ of sec. & S. W. ¼	10	"	"	480.00

	Parts of section.	Sec.	Town.	R'ng.	Area.
	S. ½ of sec. & N. W. ¼	11	"	"	480. 00
	S. ½ of sec. & N. E. ¼	12	"	"	480. 00
	E. ½ of sec	17	"	"	320. 00
	S. E. ¼ & N. fr. ¼ of sec	18	"	"	482. 29
	All of	19	"	"	643. 00
	W. ½ of sec	20	"	"	320. 00
	S. fr. ½ of sec	30	"	"	321. 00
	W. fr. ¼ of sec. & N. E. ¼	31	"	"	485. 40
	S. ½ of sec. & N. E. ¼	32	"	"	480. 00
	S. ½ of sec	33	"	"	320. 00
	W. ½ of sec	34	"	"	320. 00
	S. ½ of sec	2	97	27	320. 00
	S. ½ of sec	3	"	"	320. 00
	E. ½ of sec. & N. W. fr. ¼	7	"	"	480. 00
	W. ½ of	8	"	"	320. 00
	N. W. ¼ & S. E. ¼	9	"	"	320. 00
	S. ½ of	10	"	"	320. 00
430	S. ½ of	11	97	27	320. 00
	All of	12	"	"	640. 00
	S. W. ¼ of	15	"	"	160. 00
	All of	17	"	"	640. 00
	W. fr. ½ of sec. & S. E. ¼	18	"	"	480. 00
	All of	19	"	"	640. 00
	E. ½ of sec. & S. W. ¼	20	"	"	480. 00
	N. ½ of sec. & S. E. ¼	21	"	"	480. 00
	W. ½ of	22	"	"	320. 00
	W. ½ of	27	"	"	320. 00
	All of	28	"	"	640. 00
	All of	29	"	"	640. 00
	W. fr. ½ of sec. & N. E. ¼	30	"	"	480. 84
	E. ½ of	31	"	"	320. 00
	All of	32	"	"	640. 00
	S. ½ of sec. & N. E. ¼	33	"	"	480. 00
	W. ½ of	34	"	"	320. 00
	S. W. ¼ of	1	96	28	160. 00
	N. E. ¼ & S. W. ¼	12	"	"	320. 00
	N. ½ of	13	"	"	320. 00
	E. ½ of sec. & S. W. ¼	25	"	"	480. 00
	E. ½ of	36	"	"	320. 00
	S. W. ¼ of	5	97	28	160. 00
	S. W. ¼ of	14	"	"	160. 00
	W. ½ of sec. & S. E. ¼	24	"	"	480. 00
	W. ½ of sec. & N. E. ¼	25	"	"	480. 00
	N. E. ¼ of	33	"	"	160. 00
431	S. ½ of	3	96	29	320. 00
	S. ½ of	5	"	"	320. 00
	S. E. ¼ of	3	97	29	160. 00
	S. W. ¼ of	4	"	"	160. 00
	S. ½ of	5	"	"	320. 00
	All of	9	"	"	640. 00
	N. W. ¼ & E. ½ of	11	"	"	480. 00
	N. ½ of sec. & S. E. ¼	13	"	"	480. 00
	All of	15	"	"	640. 00
	W. ½ of sec. & N. E. ¼	17	"	"	480. 00
	All of	21	"	"	640. 00
	All of	23	"	"	640. 00
	S. ½ of sec. & N. W. ¼	25	"	"	480. 00
	All of	27	"	"	640. 00
	S. ½ of sec. & N. E. ¼	29	"	"	480. 00
	All of	33	"	"	640. 00
	S. ½ of sec. & N. E. ¼	35	"	"	480. 00
	E. ½ of	7	98	29	320. 00
	S. W. ¼ of	8	"	"	160. 00
	W. ½ of	15	"	"	320. 00
	W. ½ of	17	"	"	320. 00
	S. E. ¼	20	"	"	160. 00
	N. E. ¼	21	"	"	160. 00
	W. ½ of sec. & S. E. ¼	23	"	"	480. 00
	N. E. ¼ & S. E. ¼	25	"	"	320. 00
	S. E. ¼	27	"	"	160. 00
	N. ½ of sec. & S. W. ¼	29	"	"	480. 00
432	S. E. ¼ of	30	98	29	160. 00
	E. ½ of	31	"	"	320. 00
	All of	32	"	"	640. 00
	N. W. ¼ of	35	"	"	160. 00
	N. E. fr. ¼ & S. W. ¼	1	94	30	323. 50
	N. E. ¼	9	"	"	160. 00
	All of	11	"	"	640. 00
	N. E. ¼ of	13	"	"	160. 00
	S. W. ¼ of	8	95	30	160. 00
	N. ½ of	17	"	"	320. 00
	W. ½ of	20	"	"	320. 00
	N. ½ of sec. & S. E. ¼	22	"	"	480. 00

	Parts of section.	Sec.	Town.	R'ng.	Acres.
	E. ½ of	27	"	"	320.00
	E. ½ of	34	"	"	320.00
	S. ½ of	35	"	"	320.00
	S. ½ of	3	98	30	320.00
	S. E. ¼ of	9	"	"	160.00
	All of	23	"	"	640.00
	All of	27	"	"	640.00
	All of	1	95	31	698.68
	S. E. ¼	1	96	31	160.00
	S. ½	4	"	"	320.00
	N. E. ¼	7	"	"	160.00
	S. ½ of sec. & N. W. ¼	9	"	"	480.00
	E. ½ of sec. & S. W. ¼	20	"	"	480.00
	All of	21	"	"	640.00
	All of	29	"	"	640.00
433	N. W. ¼	32	96	31	160.00
	N. ½ of	33	"	"	320.00
	S. ½ of	8	100	31	320.00
	S. ½ of	9	"	"	320.00
	S. ½ of	10	"	"	320.00
	All of	15	"	"	640.00
	All of	17	"	"	640.00
	E. ½ of	18	"	"	320.00
	E. ½ of	19	"	"	320.00
	All of	20	"	"	640.00
	All of	29	"	"	640.00
	E. ½ of	30	"	"	320.00
	All of	31	"	"	640.00
	All of	32	"	"	640.00
	W. ½ of	33	"	"	320.00
	E. ½ of	18	93	*22	320.00
	N. E. ¼	19	"	"	160.00
	E. ½ of sec. & N. W. ¼	21	"	"	480.00
	All of	22	"	"	640.00
	S. ½ of sec. & N. W. ¼	26	"	"	480.00
	N. ½ of sec. & N. E. ¼	27	"	"	480.00
	All of	29	94	32	640.00
	W. ½ of	33	"	"	320.00
	E ½ of	33	"	"	320.00
	E. ½ of sec. & N. W. ¼	11	96	32	480.00
	W. ½ of	14	"	"	320.00
434	E. ½ of sec., E. ½ of S. W. ¼, & N. W. ¼ of N. W. ¼	23	96	32	440.00
	S. ½ of	25	"	"	320.00
	S. ½ of	2	97	32	320.00
	W. ½ of	9	"	"	320.00
	N. ½ of sec. & S. E. ¼	10	"	"	480.00
	W. ½ of sec. & S. E. ¼	11	"	"	480.00
	E. ½ of	13	"	"	320.00
	W. ½ of	14	"	"	320.00
	N. E. ¼ of	24	"	"	160.00
	N. ½ of	25	"	"	320.00
	W. ½ of	26	"	"	320.00
	W. ½ of sec. & S. E. ¼	35	"	"	480.00
	E. ½ of	36	"	"	320.00
	S. ½ of	3	98	32	320.00
	S. W. ¼ of	4	"	"	160.00
	S. ½ of	5	"	"	320.00
	S. ½ of sec. & N. W. ¼	8	"	"	480.00
	E. ½ of sec. & S. W. ¼	9	"	"	480.00
	All of	10	"	"	640.00
	W. ½ of	14	"	"	320.00
	All of	15	"	"	640.00
	E. ½ of sec. N. W. ¼, & E. ½ of S. W. ¼	17	"	"	560.00
	All of	20	"	"	640.00
	All of	21	"	"	640.00
	All of	22	"	"	640.00
	W. ½ of	23	"	"	320.00
435	All of	27	98	32	640.00
	All of	28	"	"	640.00
	All of	33	"	"	640.00
	All of	34	"	"	640.00
	All of	1	99	32	731.20
	N. fr. ½ of	2	"	"	412.08
	N. fr. ½ of	3	"	"	413.14
	N. E. fr. ¼	4	"	"	207.27
	All of	11	"	"	640.00
	All of	12	"	"	640.00
	W. ½ of	13	"	"	320.00
	N. ½ of	14	"	"	320.00
	N. W. ¼	20	"	"	160.00

* This is copied according to the certified list, but is undoubtedly an error, and should be 32 instead of 22

Parts of sections.	S.	T.	R.	Area.
N. W. ¼	21	"	"	160.00
S. E. ¼	31	"	"	160.00
S. ½ of	8	100	32	320.00
S. fr. ½ of	12	"	"	320.00
All of	13	"	"	640.00
All of	17	"	"	640.00
N. E. ¼ of	18	"	"	160.00
E. ½ of sec, & S. W. ¼	21	"	"	480.00
All of	22	"	"	640.00
All of	23	"	"	640.00
All of	24	"	"	640.00
All of	25	"	"	640.00
All of	26	"	"	640.00
All of	27	"	"	640.00
436 All of	28	100	32	640.00
All of	34	"	"	640.00
N. fr. ½ of	7	94	33	320.00
All of	9	"	"	640.00
W. ½ of sec., & S. E. ¼	10	"	"	480.00
W. ½ of sec., & S. E. ¼	15	"	"	480.00
S. fr. ½ of	18	"	"	323.47
N. W. ¼	28	"	"	160.00
S. W. ¼	29	"	"	160.00
W. ½ of	32	"	"	320.00
E. ½ of	33	"	"	320.00
All of	1	99	33	731.84
N. E. fr. ¼	3	"	"	210.29
All of	13	"	"	640.00
N. E. ¼	25	"	"	160.00
N. ½ of S. E. ¼, & S. E. ¼ of S. E. ¼	8	100	33	120.00
S. ½ of	9	"	"	320.00
S. ½ of	12	"	"	320.00
W. ½ of sec., & S. E. ¼	13	"	"	480.00
All of	14	"	"	640.00
All of	15	"	"	640.00
N. E. ¼, E. ½ of S. E. ¼, & N. E. ¼ of N. W. ¼	21	"	"	280.00
Total				96,899.46

This list approved by the Secretary of the Interior June 14, 1866.

437 *List of lands selected as indemnity under the act of July 12, 1862, entitled "An act confirming a land grant to the State of Iowa, and for other purposes," as per special certificate No. 1, by D. W. Kilbourne, agent of the State of Iowa.*

SELECTED IN SIOUX CITY DISTRICT.

Parts of sections.	S.	T.	R.	Area.
		N.	W.	
All of	1	93	34	714.90
S. W. ¼ of	3	"	"	160.00
S. E. ¼ of	4	"	"	160.00
All of	5	"	"	690.70
E. fr. ½ of	6	"	"	342.95
E. ½ of	7	"	"	320.00
All of	8	"	"	640.00
N. ½ of	9	"	"	320.00
W. ½ of	17	"	"	320.00
E. ½ of	18	"	"	320.00
N. ½ of	20	"	"	320.00
W. ½ of	17	95	34	320.00
S. E. ¼ of	19	"	"	160.00
N. W. ¼ of	29	"	"	160.00
N. E. ¼ of	29	"	"	160.00
E. ½ of	32	97	34	320.00
W. ½ of	33	"	"	320.00
N. W. ¼, & W. ½ of S. W. ¼ of	17	98	34	240.00
E. ½ of	18	"	"	320.00
438 E. ½ of	19	98	34	320.00
W. ¼ of N. W. ¼ of	29	"	"	80.00
N. W. ¼ of	29	"	"	160.00
S. ½ of	1	98	35	320.00
S. ½ of	2	"	"	320.00
S. ½ of	4	"	"	320.00
All of	9	"	"	640.00
All of	17	"	"	640.00
All of	20	"	"	640.00

	Parts of sections.	S.	T.	R.	Area.
	All of	22	"	"	640.00
	All of	27	"	"	640.00
	All of	29	"	"	640.00
	All of	31	"	"	650.34
	All of	32	"	"	640.00
	All of	34	"	"	640.00
	All of	5	99	35	708.12
	S. E. ¼ of	6	"	"	160.00
	N. E. ¼ of	7	"	"	160.00
	N ½ of	8	"	"	320.00
	S. W. ¼ of S. W. ¼ of sec.	11			
	& W. ½ of sec	14	"	"	360.00
	All of	17	"	"	640.00
	All of	21	"	"	640.00
	All of	29	100	35	640.00
	E. ½ of	30	"	"	320.00
	E. ½ of	31	"	"	320.00
	All of	32	"	"	640.00
439	All of	33	100	35	640.00
	E. ½ of	9	93	36	320.00
	S. ½ of	2	94	36	320.00
	S. ½ of	5	"	"	320.00
	N. ½ of	8	"	"	320.00
	S. ½ E. ¼ of	8	"	"	160.00
	All of	10	"	"	640.00
	N. ½ of	11	"	"	320.00
	All of	18	"	"	640.00
	All of	22	"	"	640.00
	N. ½ of sec., & S. E. ¼	33	"	"	480.00
	W. ½ of	4	98	36	320.00
	S. E. ¼, & N. ½	5	"	"	480.00
	E. ½ of	8	"	"	320.00
	W. ½ of	9	"	"	320.00
	S. ½ of	4	89	37	320.00
	All of	6	"	"	640.00
	S. ½ of	20	90	37	320.00
	S. ½ of	26	"	"	320.00
	All of	28	"	"	640.00
	All of	30	"	"	665.22
	All of	32	"	"	640.00
	All of	34	"	"	640.00
	E. ½ of	2	93	37	342.30
	S. E. ¼ of	4	"	"	160.00
	N. ½ of	6	"	"	368.63
	All of	10	"	"	640.00
440	N. W. ¼ of	14	93	37	160.00
	All of	20	"	"	640.00
	S. ½ of	2	94	37	320.00
	S. W. ¼ of	4	"	"	160.00
	S. ½ of	5	"	"	320.00
	All of	8	"	"	640.00
	All of	9	"	"	640.00
	W. ½ of sect., & S. E. ¼	10	"	"	480.00
	S. ½ of	11	"	"	320.00
	All of	13	"	"	640.00
	N. ½ of	14	"	"	320.00
	All of	15	"	"	640.00
	E. ½ of	17	"	"	320.00
	N. W. ¼ of	28	"	"	160.00
	N. ½ of sec., & S. W. ¼	29	"	"	480.00
	E. ½ of	30	"	"	320.00
	W. ½ of	32	"	"	320.00
	S. W. ¼ of	35	"	"	160.00
	E. ½ of	19	95	37	320.00
	All of	20	"	"	640.00
	All of	21	"	"	640.00
	All of	28	"	"	640.00
	All of	29	"	"	640.00
	E. ½ of	30	"	"	320.00
	All of	31	"	"	640.00
	All of	32	"	"	640.00
	All of	33	"	"	640.00
441	S. ½ of	2	96	37	320.00
	All of	11	"	"	640.00
	N. ½ of	14	"	"	320.00
	All of	22	"	"	640.00
	S. ½ of	5	97	37	320.00
	S. ½ of	6	"	"	320.00
	All of	7	"	"	640.00
	All of	8	"	"	640.00
	All of	17	"	"	640.00
	E. ½ of	18	"	"	320.00

	Parts of sections.	S.	T.	R.	Area.
	E. ½ of	19	"	"	320.00
	All of	20	"	"	640.00
	W. ½ of	21	"	"	320.00
	N. ½ of sec., & S. E. ¼	26	"	"	480.00
	N. ½ of	27	"	"	320.00
	All of	29	"	"	640.00
	E. ½ of	33	"	"	320.00
	W. ½ of sec., & S.E. ¼	34	"	"	480.00
	All of	4	98	37	641.22
	All of	9	"	"	640.00
	N. W. ¼ of	10	"	"	160.00
	N. W. ¼ of	11	"	"	160.00
	E. ½ of	14	"	"	320.00
	W. ½ of	15	"	"	320.00
	All of	21	"	"	640.00
	N. ½ of	22	"	"	320.00
	All of	23	"	"	640.00
442	All of	26	98	37	640.00
	S. ½ of	27	"	"	320.00
	S. E. ¼ of	28	"	"	160.00
	All of	32	"	"	640.00
	All of	33	"	"	640.00
	All of	34	"	"	640.00
	N. E. fr. ¼ of	1	99	37	189.85
	N. W. fr. ¼ of	2	"	"	186.55
	All of	14	"	"	640.00
	W. ½ of sec., & N. E. fr. ¼	26	"	"	480.00
	W. ½ of sec., & S. E. ¼	35	"	"	480.00
	S. fr. ½ of	36	"	"	320.40
	All of	25	94	38	640.00
	All of	26	"	"	640.00
	N. ½ of	27	"	"	320.00
	N. E. ¼ of	28	"	"	160.00
	All of	36	"	"	640.00
	All of	2	89	39	640.00
	All of	4	"	"	643.96
	All of	8	"	"	640.00
	All of	10	"	"	640.00
	All of	22	"	"	640.00
	All of	24	"	"	640.00
	All of	26	"	"	640.00
	All of	34	"	"	640.00
	W. ½ of	20	90	39	320.00
	All of	22	"	"	640.00
443	N. ½ of	26	90	39	320
	S. W. ¼ of	28	"	"	160
	All of	32	"	"	640
	All of	36	"	"	640
	S. ½ of	2	94	39	320
	S. ½ of	3	"	"	320
	S. ½ of	10	"	"	320
	N. W. ¼ of	10	"	"	160
	W. ½ of sec., & N. E. ¼ of	11	"	"	480
	S. W. ¼ of	5	98	39	160
	E. fr. ½ of	6	"	"	321.56
	All of	8	"	"	640
	All of	17	"	"	640
	E. ½ of	18	"	"	320
	E. ½ of	19	"	"	320
	All of	20	"	"	640
	W. ½ of	21	"	"	320
	All of	28	"	"	640
	All of	29	"	"	640
	All of	34	"	"	640
	All of	35	"	"	640
	All of	4	93	40	665.48
	All of	6	"	"	641.43
	All of	8	"	"	640
	All of	4	98	40	648.30
	N. ½ of	9	"	"	320
	All of	10	"	"	640
444	S. ½ of	13	98	40	320
	All of	14	"	"	640
	All of	15	"	"	640
	N. ½ of	23	"	"	320
	N. ½ of	24	"	"	320
	All of	9	99	40	640
	S. ½ of	10	"	"	320
	All of	15	"	"	640
	All of	23	"	"	640
	All of	25	"	"	640
	All of	26	"	"	640
	All of	35	"	"	640

	Parts of sections.	S.	T.	R.	Area.
	All of	36	"	"	640
	All of	4	94	41	640. 58
	W. ½ of	10	"	"	320
	E. ½ of	20	"	"	320
	All of	22	"	"	640
	All of	28	"	"	640
	All of	32	"	"	640
	All of	34	"	"	640
	All of	4	95	41	643. 16
	E. ½ of	8	"	"	320
	All of	9	"	"	640
	W. ½ of	10	"	"	320
	All of	17	"	"	640
	E. ½ of	19	"	"	320
	All of	20	"	"	640
445	All of	21	95	41	640
	All of	28	"	"	640
	All of	29	"	"	640
	E. ½ of	30	"	"	320
	All of	32	"	"	640
	All of	10	97	42	640
	All of	11	"	"	640
	All of	12	"	"	640
	All of	15	"	"	640
	All of	20	"	"	640
	All of	21	"	"	640
	N. ½ of	29	"	"	320
	E. ½ of	30	"	"	320
	E. ½ of	10	98	42	320
	All of	11	"	"	640
	All of	15	"	"	640
	All of	22	"	"	640
	W. ½ of	27	"	"	320
	All of	28	"	"	640
	S. ½ of	29	"	"	320
	N. ½ of	32	"	"	320
	All of	2	90	43	684
	All of	8	"	"	640
	All of	10	"	"	640
	N. fr. ½ of sec., & S. W. fr. ¼	18	"	"	512. 35
	W. ½ of	20	"	"	320
	All of	28	"	"	640
446	All of	30	90	43	665. 60
	S. W. ¼ of	14	91	43	160
	S. f'r ½ of	18	"	"	335. 27
	All of	24	"	"	640
	All of	26	"	"	640
	All of	32	"	"	640
	All of	34	"	"	640
	All of	36	"	"	640
	W. f'r ½ of	2	95	43	321. 97
	S. E. ¼ of	3	"	"	160
	E. ½ of sec. & S. W. ¼	10	"	"	480
	W. ½ of	11	"	"	320
	All of	17	"	"	640
	N. ½ of	20	"	"	320
	S. ½ of	21	"	"	320
	S. ½ of	5	97	43	320
	E. ½ of	7	"	"	320
	All of	8	"	"	640
	All of	25	"	"	640
	All of	35	"	"	640
	All of	36	"	"	640
	All of	5	98	43	668. 92
	All of	6	"	"	638. 55
	All of	21	"	"	640
	All of	22	"	"	640
	All of	28	"	"	640
	All of	33	"	"	640
447	All of	34	"	"	640
	All of	35	"	"	640
	All of	3	99	43	645. 30
	All of	4	"	"	644. 08
	E. f'r ½ of	5	"	"	321. 67
	All of	8	"	"	640. 00
	All of	9	"	"	640
	All of	17	"	"	640
	E. ½ of	18	"	"	320
	E. ½ of	19	"	"	320
	All of	20	"	"	640
	All of	29	"	"	640
	E. ½ of	30	"	"	320
	All of	32	"	"	640
	All of	25	100	43	640
	All of	26	"	"	640

	Parts of section.	S.	T.	R.	Area.
	All of	27	"	"	640
	All of	34	"	"	640
	All of	35	"	"	640
	All of	2	93	44	640
	All of	10	"	"	640
	All of	12	"	"	640
	N. ½ of	14	"	"	320
	W. f'r ¼ of sec., & S. E. ¼	2	94	44	487.57
	All of	12	"	"	640
	E. ½ of sec., & S. W. ¼	14	"	"	480
	E. ½ of sec., & S. W. ¼	22	"	"	480
448	All of	28	"	"	640
	All of	32	"	"	640
	All of	36	"	"	640
	W. ½ of sec., & N. E. ¼	25	95	44	480
	E. ½ of	26	"	"	320
	N. E. ¼ of	35	"	"	160
	S. ½ of	36	"	"	320
	S. ½ of	1	97	44	320
	S. ½ of	2	"	"	320
	All of	11	"	"	640
	All of	12	"	"	640
	All of	1	98	44	673.74
	All of	2	"	"	662.20
	E. ½ of	7	"	"	320
	All of	8	"	"	640
	All of	10	"	"	640
	All of	11	"	"	640
	All of	12	"	"	640
	All of	14	"	"	640
	All of	15	"	"	640
	All of	20	"	"	640
	All of	21	"	"	640
	All of	22	"	"	640
	All of	27	"	"	640
	All of	28	"	"	640
	All of	34	"	"	640
	All of	5	94	45	658.34
449	All of	8	"	"	640
	All of	10	"	"	640
	All of	20	"	"	640
	All of	22	"	"	650
	All of	26	"	"	640
	All of	28	"	"	640
	N. ½ of sec., & S. W. ¼	32	"	"	440
	All of	11	95	45	640
	All of	12	"	"	640
	E. ½ of sec. & S. W. ¼	14	"	"	440
	All of	22	"	"	640
	All of	23	"	"	640
	All of	27	"	"	640
	E. ½ of	28	"	"	320
	All of	32	"	"	640
	All of	33	"	"	640
	All of	5	98	45	706.14
	All of	6	"	"	653.71
	E. ½ of	7	"	"	320
	All of	8	"	"	640
	All of	11	"	"	640
	All of	12	"	"	640
	All of	14	"	"	640
	All of	15	"	"	640
	All of	20	"	"	640
	All of	22	"	"	640
	All of	23	"	"	640
	All of	28	98	45	640
	All of	29	"	"	640
	E. ½ of	30	"	"	320
	E. ½ of	31	"	"	320
	All of	32	"	"	640
	S. ½ of	2	99	45	320
	S. ½ of	3	"	"	320
	S. ½ of	4	"	"	320
	All of	9	"	"	640
	All of	10	"	"	640
	All of	11	"	"	640
	All of	14	"	"	640
	All of	15	"	"	640
	All of	22	"	"	640
	All of	23	"	"	640
	All of	27	"	"	640
	All of	28	"	"	640
	E. ½ of	32	"	"	320
	All of	33	"	"	640

450 Parts of section.	S.	T.	R.	Area.
All of	17	100	45	640
All of	20	"	"	640
All of	21	"	"	640
All of	28	"	"	640
All of	29	"	"	640
All of	33	"	"	640
All of	34	"	"	640
E. ½ of	20	97	46	320
451 S. ½ of	21	"	"	320
All of	28	"	"	640
All of	29	"	"	640
All of	12	98	46	640
All of	13	"	"	640
All of	23	"	"	640
All of	24	"	"	640
W. ½ of	25	"	"	320
All of	26	"	"	640
All of	27	"	"	640
All of	36	"	"	640
All of	14	97	47	640
All of	15	"	"	640
All of	22	"	"	640
All of	23	"	"	640
N. ½ of	24	"	"	320
S. E. ¼ of	25	"	"	160
N. W. ¼ of	26	"	"	160
All of	27	"	"	640
All of	33	"	"	640
W. ½ of	34	"	"	320
S. ½ of	35	"	"	320
All of	36	"	"	640
All of	5	97	48	719.22
S. ½ of	9	"	"	320
S. ½ of	10	"	"	320
All of	25	"	"	640
452 E. ½ of	36	"	"	320
Total				200,704.28

This list approved by Secretary of the Interior, June 14, 1866.

Int. 8. If any part of N. W. ¼, sec. 5, T. 90, R. 29 W., was not included in the railway grant; and state why, and for what purpose, and for whose benefit.

Ans. 8. The N. ½ of N. W. ¼ of section 5, township 90, range 29, was approved and certified to the State under the act of July 12, 1862, and has been patented by the State to the Des Moines Valley Railroad Company.

453 Cross-examination:

Interrogatories propounded by the clerk.

Int. 1. Are you directly or indirectly interested in this action? And if interested, explain the interest you have.

Ans. 1. I have no interest, directly or indirectly, in this action.

Int. 2. Are all your statements in the foregoing answers made from your personal knowledge; and if not, do your answers show what are made from your personal knowledge, and what from information, and the source of the information? If not, now show what is from information, and give its source.

Ans. 2. Aside from my answer to int. 1, all my answers are made from information gathered from the records on file in my office.

454 Int. 3. State everything you know concerning the subject of this action favorable to either party.

Ans. 3. I believe I know nothing further than already stated.

AARON BROWN,
Register State Land Office.

Subscribed and sworn to by Aaron Brown, before me, this 16th day of February, 1871.

Des Moines, Iowa.

J. S. CLARK,
U. S. Com'r.

U. S. OF AMERICA, *State of Iowa, ss:*

I, J. S. Clark, United States commissioner, district of Iowa, do hereby certify that, in pursuance of the annexed commission to me directed, I caused to come before me, at my office in Des Moines, Iowa, Aaron
455 Brown, register State land office, on the 4th day February, 1871, who was then and there by me sworn and examined, and such examination reduced to writing, and the exhibits arranged in proper order by me; and after being read over by the said witness in my presence, the same was subscribed and sworn to by said witness in my presence, and his deposition is herewith returned.

And I further certify that neither of the parties, nor their agents or attorneys, were present during the examination of said witness, and that the examination continued through the 4, 6, 7, 8, 9, 10, 11, 13, 14, 15, and 16th days of Feb'y, 1871.

Given under my hand this 16 day of Feb'ry, 1871.

Des Moines, Iowa.

J. S. CLARK,
U. S. Commissioner.

Commissioner's fees:

96 folios, at 25c. each	$24 00
One subpœna	25
Administering one oath	10
	$24 35

Witness fees:

Eleven days' attendance, at $1 50	$16 50
Travel, one mile	10
	$16 60

(Endorsed as follows:) U. S. circuit court. The Iowa Homeste'd Com. v. The Des Moines Nav. & Railroad Company. Deposition
456 of Aaron Brown. Filed May 9, 1871. George B. Corkhill, clerk. J. S. Clark, commissioner. Fees, $24 35. Paid by Grant & Smith, att'ys f'r pl'ff.

457 *Deposition of C. H. Booth.*

In the circuit court of the United States for the district of Iowa. In equity.

THE IOWA HOMESTEAD COMPANY
vs.
THE DES MOINES NAVIGATION AND RAILROAD Company & others.

Deposition of C. H. Booth, a witness on the part of plaintiff.

On this 10th day of February, A. D. 1871, C. H. BOOTH, a witness on

the part of plaintiff, appeared before me, at my office in the city of Dubuque, Iowa, who, after being first duly sworn to testify the truth, the whole truth, and nothing but the truth, answers as follows, to wit:

Int. 1. What is your age, place of residence, and occupation; in what capacity, and how long have you been employed by the Dubuque and Pacific and the Dubuque and Sioux City Railroad Company;
458 and what control have you over the records of said companies?

Ans. 1. My age is 56 years; my residence is Dubuque Iowa; and my occupation, secretary and treasurer of railroad companies. I was treasurer and director of the Dubuque and Pacific Railroad Company from 1857 to 1860. In the latter year, in August, all the property, lands, and franchises passed into the possession of the Dubuque and Sioux City Railroad Company, both by decree of foreclosure, dated August 9, 1860, and by conveyance executed by the Dubuque and Pacific Railroad Company, August 21, 1860. With the exception of about one month, in the year 1864, from that time to the present, I have been employed as an officer of the Dubuque and Sioux City Railroad in some one of the following positions—secretary, treasurer, auditor, paymaster, and general freight agent. And as the present secretary and treasurer of the company, I have the charge and control of most of the papers and documents of the company, and, I believe, of all its records.

Adjourned to February 14, 1871, at 10 o'clock a. m.

Tuesday, February 14, 1871, at 10 o'clock—continued.

459 Int. 2. When and from what point was the Dubuque and Pacific Railroad *Company* begun; how much railroad did said company build; from what place towards what place; to what other company was said railroad and its franchises and property conveyed, and when; how much of said railroad, and from what point, and to where has said road been built by the Dubuque and Pacific and Dubuque and Sioux City Company; and how much of said railroad has been built by the Iowa Falls and Sioux City Railroad Company, under a contract with the Dubuque and Sioux City Company; and when was the whole railroad from Dubuque to Sioux City completed?

Ans. 2. The Dubuque and Pacific Railroad Company was chartered in 1853, for the purpose of building a railroad from Dubuque westerly, on the best route towards the Pacific Ocean. It built thirty (30) miles of road, from Dubuque westwardly to Dyersville, and in May, 1857, it commenced operating it. The Dubuque and Pacific Railroad Company continued to build the railroad, and in August, 1860, had completed and was operating the road as far west from Dubuque as the town of
460 Jessup, a distance of seventy-seven (77) miles; and at this time the Dubuque and Pacific Railroad Company conveyed its entire property and franchise to the Dubuque & Sioux City Railroad Company. The conveyance was dated August 21, 1860, and the Dubuque and Sioux City Railroad Company took possession and continued the building westwardly to Iowa Falls, a distance of one hundred and forty-two and a half (142½) miles from Dubuque, and finished, and commenced operating the road between Dubuque and Iowa Falls in April, 1866. The road from Iowa Falls to Sioux City, a distance of one hundred and eighty-four (184) miles, was built by the Iowa Falls and Sioux City Railroad Company *made* a contract, dated 7 January, 1868, with the Dubuque and Sioux City Railroad Company. It was completed in July or August, 1870.

Int. 3. How many certificates of the completion of sections of twenty miles each have been given to the Dubuque and Pacific and Sioux City

Company by the governor of Iowa, and to what point under said certificates was the road built, and how far from Dubuque?

461 Ans. 3. There have been certificates of the completion of seven sections of twenty miles each, given to the Dubuque and Pacific and Dubuque & Sioux City Railroad Companies by the governor of Iowa. The companies received these several certificates on account of building the road to Iowa Falls, 142½ miles west from Dubuque.

Int. 4. When were the lands granted to the State of Iowa by the act of Congress May, 1856, certified to the Dubuque & Pacific and Dubuque & Sioux City Railroad Company, and by whom? State specifically when, and under what certificate from the governor of Iowa were the alternate odd sections of land within six-mile limits and fifteen-mile limits, in the townships 86, 87, 88, 89, & 90, ranges 27, 28, & 29, west of 5th p. m.

Ans. 4. There were 1,152,139.32 acres of land certified under the land-grant act of 1856 to the Dubuque & Pacific and Dubuque & Sioux City line of road, by certificates December 23, 1858, by the Commissioner of the General Land Office and the Secretary of the Interior, and there was an additional amount of 79,077.25 acres similarly certified on February 26, 1863. The most of the lands certified in ranges 27, 28, & 29 west, in townships 87, 88, 89, & 90 north would belong to the first and second twenty-mile sections of the road, as there were only 77,344.58 acres lying east of range 27, from which the 120 sec-

462 tions could be made up that the company was authorized to sell before building any portion of the road. The certificate of Ralph P. Lowe, governor of State of Iowa, to the completion of forty (40) miles, being the first and second twenty-mile sections of road west from Dubuque, bears date April, 1858. The right to sell these lands in ranges 27, 28, & 29 west accrued under this certificate. The Dubuque & Sioux City Railroad Company sold these lands to George W. Forrest, Frederick C. Gebhard, and William J. Barney, trustees by warranty deed. The books in my office show that the sale was made in December, 1863, but I cannot give the precise date of the deed. It is numbered 215, according to our series of deeds, and it would most likely be dated in the last of December, 1863.

Int. 5. State whether or not said lands within the five-mile limits of the Des Moines River above-referred to lie within a contiguous twenty miles of said railroad, as located and then built, and how many acres under said grant of 1856 lie east of said lands, and what quantity of acres east of the same could have been earned and sold prior to these lands in the Des Moines River Valley, and with' five miles thereof?

Ans. 5. The lands referred to in range' 27, 28, & 29 lie within a

463 contiguous twenty miles of the railroad, as located and built, and the number of acres lying east of said lands subject to the grant was 77,344.58 acres.

Cross-interrogatories filed by the clerk.

Int. 1. Are you directly or indirectly interested in this action, and, if interested, explain the interest you have?

Ans. 1. I am not interested in this action.

Int. 2. Are all your statements in the foregoing answers made from your personal knowledge; and if not, do your answers show what are made from your personal knowledge, and what from information, and the source of that information? If so, show what is from information, and give its source.

Ans. 2. These statements and answers are made from personal knowledge.

Int. 3. State everything you know concerning the subject of this action favorable to either party.

Ans. 3. I am not aware that I know anything more concerning this action favorable to either party.

C. H. BOOTH.

On this 14th day of February, A. D. 1871, the foregoing testimony of C. H. Booth, having been reduced to writing by me, and
464 after having the same read to him, he subscribed his name thereto and made oath that the same is correct and true. Done at my office, in the city of Dubuque, Dubuque County, State of Iowa, as witness my signature.

JOHN M. BALLON,
U. S. Commissioner for Dist. of Iowa.

Com'r's fees, $5 00; paid by Grant & Smith, att'ys.

Circuit court of the United States, district of Iowa ss:

To JOHN BALLON, Dubuque County, State of Iowa, greeting:

Know ye that, in confidence of your prudence and fidelity, you have been appointed, and by these presents you are invested with full power and authority to examine C. H. Booth on his corporal oath as a witness in a cause depending in the circuit court of the United States for the district of Iowa, wherein The Iowa Homestead Company is plaintiff and
465 The Des Moines Navigation and Railroad Company is defendant, on the part of the plaintiff, upon the interrogatories annexed to this commission; and therefore you are hereby commanded that at certain days and place to be appointed by you for that purpose, you do cause the said C. H. Booth to come before you, and then and there examine him upon oath upon the said interrogatories; that you propound to the said witness the interrogatories and cross-interrogatories hereto annexed, and cause the same to be written out and the answers thereto to be inserted immediately following the respective interrogatories; that you cause the whole to be read over to the witness and the same to be subscribed by him, and duly sworn to before you; that you take said deposition, in accordance with your certificate which you will attach to the deposition of each separate witness, stating that it was subscribed and sworn to by the said witness, at the time and place therein mentioned; that you then seal up the whole, including this commission and the interrogatories hereto annexed, all enclosed in one envelope, and return the same to the clerk of the United States circuit court, at Des Moines, Iowa; that you endorse on the outside of said
466 envelope thus directed, the title of the cause in which the deposition is to be used, and that you execute this commission with all convenient speed.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this 25th day of January, 1871, and in the 95 year of the independence of the United States of America.

[SEAL.] Attest:

GEORGE B. CORKHILL,
Clerk of United States Circuit Court, Dist. of Iowa.

Circuit court of the United States for the district of Iowa.

THE IOWA HOMESTEAD COMPANY
vs.
THE DES MOINES NAVIGATION AND RAILROAD Company & others. } In equity.

The defendants in the above entitled cause are notified that, on
467 the twenty-fifth day of January, 1871, a commission will be sued out of the office of the clerk of said circuit court, to take the deposition of C. H. Booth, of Dubuque County, Iowa. Said commission will be directed to such commissioner as the court or any judge thereof, or the clerk of said court, if so authorized, may name; and hereto annexed are copies of the questions to be propounded to said witness.

Nov. 26, 1870.

GRANT & SMITH,
Pl'ff's Attorneys.

Int. 1. What is your age, place of residence, and occupation; in what capacity, and how long have you been employed by the Dubuque & Pacific, and the Dubuque & Sioux City Railroad Companies; and what control have *control have* you over the records of said companies?

Int. 2. When and from what point was the Dubuque & Pacific Railroad *Company* begun? How much railroad did said company build—from what place towards what place; to what other company was said railroad, its franchises and property conveyed, and when? How
468 much of said railroad, and from what point, and when, has been built by the Dubuque & Pacific, and Dubuque & Sioux City Company, and how much of said railroad has been built by the Iowa Falls and Sioux City Railroad Company under a contract with the Dubuque & Sioux City Company, and when was the whole railroad from Dubuque to Sioux City completed?

Int. 3. How many certificates of the completion of sections of twenty miles each, have been given to the Dubuque & Pacific and Dubuque & Sioux City Company by the governor of Iowa, and to what point under said certificates was the road built, and how far from Dubuque?

Int. 4. When were the lands granted to the State of Iowa by the act of Congress of May, 1856, certified to the Dubuque & Pacific and Dubuque & Sioux City Railroad Company, and by whom? State specifically when, and under what certificate from the governor of Iowa, were the alternate odd-numbered sections of land, within six-mile limit' and fifteen-mile limits, in townships 86, 87, 88, 89, & 90—ranges 27, 28, & 29 west of 5th p. m., within five miles of the Des Moines River, earned by the Dubuque & Pacific, and Dubuque & Sioux City Railroad Com-
469 pany by the actual construction of said road; when did the right to sell said lands—that is, under what certificate of completion—accrue? Has the Dubuque & Sioux City Company sold them; by what kind of deed, warranty or otherwise, and when, to whom?

Int 5. State whether or not said lands, within the five-mile limits of the Des Moines River above referred to lie within a contiguous twenty miles of said railroad as located and then built, and how many acres under said grant of 1856, lie east of said lands, and what quantity of acres east of the same could have been earned and sold prior to these lands in the Des Moines River Valley and within five miles thereof.

(Endorsed as follows:)
Service accepted Jan'y 9, 1871.

NOURSE & KAUFFMAN,
J. M. ELLWOOD,
Of Record for certain Def'ts.

470 Circuit court of the United States for the district of Iowa.

THE IOWA HOMESTEAD COMPANY
vs.
THE DES MOINES NAVIGATION AND RAILROAD & others. } In equity.

The defendants in the above-entitled cause are notified that, on the twenty-fifth (25) day of January, 1871, a commission will be sued out of the clerk's office of said circuit court, to take the deposition of C. H. Booth, of Dubuque County, Iowa. Said commission will be directed to such commissioner as the court or any judge thereof, or clerk of said court, if so authorized, may name; and hereto annexed are the copies of the questions to be proposed to said witness.

Nov. 26, 1870.

GRANT & SMITH,
Pl'ff's Att'ys.

Int. 1. What is your age, place of residence, and occupation; in what capacity and how long have you been employed by the Dubuque & Pacific, and the Dubuque & Sioux City Railroad Companies; and what control have you over the records of said companies?

471 Int. 2. When and from what point was the Dubuque and Pacific Railroad *Company* begun; how much railroad did said company build from that place; towards what place; to what other company was said railroad and its franchises and property conveyed, and when; how much of said railroad, and from what point, and to where has said road been built by the Dubuque & Pacific, and Dubuque & Sioux City Company, and how much of said railroad has been built by the Iowa Falls and Sioux City Railroad Company under a contract with the Dubuque & Sioux City Company, and when was the whole railroad from Dubuque to Sioux City completed?

Int. 3. How many certificates of the completion of sections of twenty miles each have been given to the Dubuque & Pacific and Dubuque & Sioux City Company by the governor of Iowa, and to what point under said certificate was the road built, and how far from Dubuque?

Int. 4. When were the lands granted to the State of Iowa by the act of Congress May, 1856, certified to the Dubuque & Pacific, and Dubuque & Sioux City Railroad Company, and by whom? State

472 specifically when and under what certificate from the governor of Iowa, were the alternate odd sections of land within the six-mile limit and fifteen-mile limits in townships 86, 87, 88, 89, & 90, ranges 27, 28, & 29 west of 5th p. m., within five miles of the Des Moines River, earned by the Dubuque & Pacific, and Dubuque & Sioux City Railroad Company, by the actual construction of said road; when did the right to sell said lands—that is, under what certificate of completion—accrue; has the Dubuque & Sioux City Company sold them; by what kind of deed, warranty or otherwise, and when and to whom?

Int. 5. State whether or not said lands within the five-mile limits of the Des Moines River, above referred to, lie within a contiguous twenty

miles of said railroad as located and then built, and how many acres under said grant of 1856 lie east of said lands, and what quantity of acres east of the same could have been earned and sold prior to these lands, in the Des Moines River Valley and within five miles thereof?

473 I acknowledge service of foregoing notice and copy of interrogatories, and object to said interrogatories No. 2, No. 3, No. & No. 5, propounded by plaintiff to witness, C. H. Booth, on the ground that each and all of said interrogatories are irrelevant and incompetent, and because the same are leading in form.

Jan'y 9, 1871.

H. STRONG,
Att'y for D. V. R. R. Co.

Cross-interrogatories filed by clerk.

Int. 1. Are you directly or indirectly interested in this action; and if interested, explain the interest you have?

Int. 2. Are all your statements in the foregoing answer made from your personal knowledge; and if not, do your answers show what are made from your personal knowledge, and what from information, and the source of that information? If not, now show what is from information, and give its source.

Int. 3. State everything you know concerning the subject of the action favorable to either party.

474 (Endorsed as follows:) Iowa Homestead Co. vs. Des M. Nav. & R. R. Co. Notice, interrogatories, cross-interrogatories, commission to take testimony of C. H. Booth. Filed May 19, 1871. George B. Corkhill, clerk.

475 *Deposition of Josiah A. Harvey.*

Circuit court of the United States, district of Iowa, ss:

To J. N. CORNISH, Fremont County, State of Iowa, greeting:

Know ye that, in confidence of your prudence and fidelity, you have been appointed, and by these presents you are invested with full power and authority to examine Josiah A. Harvey, on his corporal oath, as a witness in a cause depending in the circuit court of the United States for the district of Iowa, wherein The Iowa Homestead Company is plaintiff and The Des Moines Navigation and Railroad Company is defendant, on the part of the plaintiff, upon the interrogatories annexed to this commission. And, therefore, you are hereby commanded
476 that, at certain days and places to be appointed by you for that purpose, you do cause the said Josiah A. Harvey to come before you, and then and there examine him on oath upon the said interrogatories; that you propound to the said witness the interrogatories hereto annexed, and cause the same to be written out, and the answers thereto to be inserted immediately following the respective interrogatories; that you cause the whole to be read over to the witness, and the same to be subscribed by him, and duly sworn to before you; that you take said deposition in accordance with your certificate which you will attach to the deposition of each seperate witness, stating that it was subscribed and sworn to by the said witness at the time and place therein men-

tioned; that you then seal up the whole, including this commission and the interrogatories hereto annexed, all enclosed in one envelope, and return the same to the clerk of the United States circuit court at Des Moin's, Iowa; that you endorse on the outside of said envelope thus directed, the title of the cause in which the deposition is to be used, and that you execute this commission with all convenient speed.

477 Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this 25 day of January, 1871, and in the 95 year of the independence of the United States of America.

[SEAL.] Attest: GEORGE B. CORKHILL,
Clerk of United States Circuit Court District of Iowa.

Circuit court of the United States for the district of Iowa.

THE IOWA HOMESTEAD COMPANY
vs.
THE DES MOINES NAVIGATION AND RAILROAD Company & others. } In equity.

The defendants in the above-entitled cause are notified that, on the twenty-fifth (25th) day of January, 1871, a commission will be sued
478 out of the office of the clerk of said circuit court to take the deposition of Josiah A. Harvey, of Fremont County, Iowa. Said commission will be directed to such commissioner as the court or any judge thereof, or the clerk of said court, if so authorized, may name, and hereto annexed copies of the questions to be propounded to said witness.

Nov. 26, 1870.

GRANT & SMITH,
Plaintiff's Attorneys.

Int. 1st. What is your age, place of residence, and occupation, and are you the Josiah A. Harvey who was formerly register of the Iowa State land office, and who was appointed and acted as commissioner or agent of the State of Iowa in the settlement of the claims of the State of Iowa under resolution of Congress of 2 March, 1861, and act of Congress of 12 July, 1862, in relation to lands in the Des Moines River Valley, north of the Raccoon Fork?

Int. 2. Did you make a settlement of the claims of the State with the executive officers of the United States under said resolution and act?

Int. 3. In making said settlement state what lands were conceded to belong to the State under the resolution of 2 March, 1861, and
479 particular' whether the odd sections of land above the forks of the 'Coon in the Des Moines River Valley within five miles thereof which were included within the limits of the railway grants under the acts of Congress of May, 1856, were included or excluded.

Int. 4. In the settlement made by you under said resolution and acts if said odd sections within the railway grant of 1858 within five miles of the Des Moines River in townships 86, 87, 88, 89, & 90, and ranges 27, 28, 29, & 30, were not conceded to belong to the extension of the grant of the Des Moine' improvement, under the act of 1846, under either the resolution of 2 March, 1861, or act of 12 July, 1862, what was done with them.

Int. 5. If the said odd sections in said townships were not treated as part of the lands included under said resolulion and act, under what act of Congress and to what grant were they conceded to belong?

Int. 6. If they were conceded to belong to the Dubuque and Pacific, now the Dubuque and Sioux City grant under the act of 1856, what was conceded to and obtained by the State in lieu thereof and indemnity therefor?

Int. 7. In the report made to the census board of Iowa, under
480 your approval, you refer to the 1st indemnity lands selected under special certificate of April 25, 1863. Will you state if this special certificate 297,603.74 acres, included other lands in lieu of *of* the odd sections above referred to, included in the railway grant of 1856; and state whether or not any agreement was had between you as agent of the State and the Secretary of the Interior, whereby the title to the Dubuque and Sioux City Railroad Company, or the State for them, was conceded to have title to the above odd sections, and the State allowed other lands under said special certificate to be selected in lieu of the same?

Int. 8. In your settlement with the Secretary of the Interior what was claimed by you and conceded by him in relation to said odd sections in the five-mile limit of the Des Moines River grant of 1846 and the railway grant of 1856, above the forks of the Raccoon River?

Int. 9. In said report you speak of Messrs. Kilbourne and Mason as agents of The Des Moines Valley Railroad Company; state whether or not they were agents of said company, and if they were, whether
481 or not they or either of them knew that the title of the Dubuque and Sioux City Railway Company to said odd sections in the townships above named, was conceded to be good, by you as an agent of the State, and the Secretary of the Interior, and that other lands were granted to the State in lieu thereof, and whether either of these parties selected the lands conceded by said special certificate.

Int. 10. You have been register of the State land office, and made the settlement above referred to. Can you state whether or not the land in townships 89 & 90, and ranges 28 & 29, which lie within the five-mile limit of the west side of the Des Moines River, were ever certified or allowed to the State under any other than the railway grant of 15 of May, 1856; and whether or not the State in your settlement obtained other lands in lieu thereof; and whether or not Messrs. Mason & Kilbourne, agents of The Des Moines Valley Railroad Company, knew these facts?

(Endorsed as follows:)
Service accepted Jan'y 9, 1871.

NOURSE & KAUFFMAN,
J. M. ELLWOOD,
For record for certain Def't.

482 Circuit court of the United States for the district of Iowa.

THE IOWA HOMESTEAD COMPANY
vs.
THE DES MOINES NAVIGATION AND RAILROAD Company & others.
} In equity.

The defendants in the above-entitled cause are notified that, on the twenty-fifth (25th) day of January, A. D. 1871, a commission will be sued out of the office of the clerk of said circuit court to take the deposition

of Josiah A. Harvey, of Fremont County, Iowa. Said commission will be directed to such commissioner as the court or any judge thereof, or the clerk of said court, if so authorized, may name; and hereto annexed are copies of the questions to be proposed to said witness.

Nov. 26, 1870.

GRANT & SMITH,
Pl'ff's Attorneys.

Int. 1. What is your age, place of residence, and occupation; and are you the Josiah A. Harvey who was register of the Iowa State land office, and who was appointed and acted a commissioner or
483 agent of the State of Iowa, in the settlement of the claims of the State of Iowa, under resolutions of Congress of 2 March, 1861, and act of Congress of 12 July, 1862, in relation to lands in the Des Moines River Valley north of the Raccoon Fork?

Int. 2. Did you make a settlement of the claims of the State with the executive officers of the United States under said resolutions and act?

Int. 3. In making said settlement state what lands were conceded to belong to the State under the resolutions of 2 March, 1861, and particular' whether the odd sections of land above the forks of the 'Coon, in the Des Moines River Valley, within five miles thereof, which were included within the limits of the railway grants under the acts of Congress of May, 1856, were included or excluded.

Int. 4. In the settlement made by you under said resolution and act, if said odd sections within the railway grant of 1856, within five miles of the Des Moines River, in townships 86, 87, 88, 89, & 90, ranges 27, 28, 29, & 30, were not conceded to belong to the extension of the grant of the Des Moines improvement, under the act of 1846, under
484 either the resolution of 2 March, 1861, or act of 12 of July, 1862, what was done with them?

Int. 5. If the said odd sections in said townships were not treated as part of the lands included under said resolution and act, under what act of Congress, and to what grant were they conceded to belong?

Int. 6. If they were conceded to belong to the Dubuque and Pacific, now Dubuque and Sioux City, grant, under the act of 1856, what was conceded to and obtained by the State in lieu thereof and indemnity therefor?

Int. 7. In the report made to the census board of Iowa, under your approval, you refer to 1st indemnity lands selected under special certificate of April 25, 1863, 297,603.74 acres. Will you state if this special certificate included other lands in lieu of the odd sections above referred to, included in the railway grant of 1856; and state whether or not any agreement was had between you as agent of the State and the Secretary of the Interior, whereby the title of the Dubuque and Sioux City Railroad Company, or the State for them, was conceded to have title to the above odd sections, and the State allowed other lands under said special
485 certificate to be selected in lieu of the same?

Int. 8. In your settlement with the Secretary of the Interior, what was claimed by you and conceded by him in relation to said odd sections, in the five-mile limit of the Des Moines River grant of 1846, and the railway grant of 1856, above the forks of the Raccoon River?

Int. 9. In said report you speak of Messrs. Kilbourne & Mason as agents of the Des Moines Valley Railway Company. State whether or not they were agents of said company; and if they were, whether or not they or either of them knew the title of the Dubuque & Sioux City

Railway Company to said odd sections, in the townships above named, was conceded to be good by you as agent of the State, and the Secretary of the Interior, and that other lands were granted to the State in lieu thereof, and whether either of these parties selected the lands conceded by said special certificate?

Int. 10. You have been register of the State land office, and made the settlement above referred to. Can you state whether or not the land in township' 89 & 90, and ranges 28 & 29, which lie within the five-mile limit of the west side of the Des Moines River, were ever certified
486 or allowed to the State under any other than the railway grant of 15 May, 1856, and whether or not Messrs. Mason & Kilbourne, agent' of the Des Moines Valley Railroad Company, knew these facts?

I hereby acknowledge service of foregoing notice and copy of interrogatories, and object to each of the interrogatories propounded to witness, Josiah A. Harvey, by pl'ff, from No. 2 to No. 10, inclusive, because each of the said several interrogatories No. 2, No. 3, No. 4, No. 5, No. 6, No. 7, No. 8, No. 9, & No. 10, is irrelevant and incompetent, and because each of same is leading in form.

Jan'y 9, 1871.

H. ST'ONG,
Att'y for D. M. V. R. R. Co.

487 Cross-interrogatories filed by the clerk.

1. Are you, directly or indirectly, interested in this action? And if interested, explain the interest you have.

2. Are all your statements in the foregoing answers made from your personal knowledge? And if not, do your answers show what are made from your personal knowledge, and what from information? If not, now show what is from information and give it' source.

3. State everthing you know concerning the subject of this action favorable to either party?

(Endorsed as follows:) Iowa Homestead Company vs. Des M. Nav. & R. R. Co. Com. to take dep. of Josiah A. Harvey.

488 United States circuit court. District of Iowa.

IOWA HOMESTEAD CO.
vs.
DES M. NAV. & R. R. CO.

Deposition of Josiah A. Harvey taken before me, Joel N. Cornish, a notary public within and for the county of Fremont, and State of Iowa, in pursuance of the annexed commission, at my office in Sidney, in said county, on this 17th day of February, 1871, viz:

The said JOSIAH A. HARVEY, being by me duly sworn according to law, on oath deposes and testifies as follows:

Int. 1. What is your age, place of residence and occupation, and are you the Josiah A. Harvey who was formerly register of the State land office, and who was appointed and acted a commissioner or agent of the State of Iowa in the settlement of the claims of the State of Iowa, under the resolutions of Congress of 2 of March, 1861, and act of Congress of July 12, 1862, in relation to lands in the Des Moines Valley north of the Raccoon Fork?

489 Ans. 1. My age is forty-two years; I am the Josiah A. Harvey, who was formerly register of the State land office, and who was appointed and acted as commissioner of the State in the settlement of said claims; my occupation now is principally practicing law, but I am engaged to some extent also in farming and stock-raising.

Int. 2. Did you make settlement of the claims of the State with the executive officers of the United States under said resolution and act?

Ans. 2. I did, as authorized and required by the act of the general assembly of Iowa, approved March 30, 1866.

Int. 3. In making said settlement, state what lands were conceded to belong to the State under the resolution of March 2, 1861, and particularly, whether the odd sections of land above the forks of the 'Coon, in the Des Moines River Valley, within five miles thereof, which were included within the limits of the railway grants under act of Congress of May, 1856?

Ans. 3. In view of the law as understood to be settled in the case of the "Dubuque and Pacific Railroad Company vs. Litchfield," (22 How., 66,) the lands in odd sections within five miles of the Des Moines
490 River above the point referred to, and which were within the limits of the grant for railroad purposes of 15 May, 1856, were considered as enuring under said grant to the railroad companies, and were therefor' excluded from this settlement, as land otherwise appropriated by the Government, notwithstanding they had been previously certified to the State, under act of 1846, and disposed of by the State. The 44,838.64 acres which in said settlement were considered as confirmed to the State by said resolution of March 2, 1861, (the numbers of which will be found, I think, on pages 30 & 31 of biennial report of my successor of Nov. 12, 1867,) I understand to be those tracts of the Des Moines River lands to which the railroad companies made no claim under their said grant; such only were included in the settlement.

Int. 4. In the settlement made by you, under said resolution and act, if said odd sections within the railway grant of 1856, within five miles of the Des Moines River, in townships 86, 87, 88, 89, & 90, and ranges 27, 28, 29, & 30, were not conceded to belong to the extension of the grant of the Des Moines River improvement, under act of 1846,
491 under either the resolution of March 2, 1861, act of July 12, 1862, what was done with them?

Ans. 4. They were as above stated considered as disposed of by the Government, by the act of May, 1856, and to have passed to the State for railroad purposes.

Int. 5. If said odd sections in said townships were not treated as part of the lands included under said resolution and act under what act of Congress, and to what grant were they conceded to belong?

Ans. 5. They were conceded to belong to the railroad grant of act of Congress of 15 May, 1856, as above stated.

Int. 6. If they were conceded to belong to the Dubuque & Pacific (now Dubuque & Sioux City) grant, under the act of 1856, what was conceded to and obtained by the State in lieu thereof, and indemnity therefor?

Ans. 6. I have not here the means of ascertaining the limits of the grant as fixed by and applied to the respective roads, and cannot from memory state whether the townships referred to, fall within the limits of the road referred to or not, but say, that these lands (within five miles of the river and above the fork) and in odd sections and within the limits of either of the railroads) were in said settlement con-
492 sidered railroad land, under act of 1856, such as fall within the

limits of said railroad for the benefit of that road, of course, and the State wa' to receive other lands in lieu thereof, and as indemnity therefor, as provided by said act of July 12, 1862.

Int. 7. In the report made to the census board under your approval you refer to 1st indemnity land selected under special certificate of April 25, 1856. Will you state if the special certificate included other lands in lieu of the odd sections above referred to, included in the railroad grant of 1865, and state whether or not any agreement was had between you, as agent, and the Secretary of the Interior, whereby the title of the Dubuque and Sioux City Railroad Company, or the State for them, was conceded to have title to the above odd sections, and the State allowed other lands under said special certificate to be selected in lieu of the same?

Ans. 7. The latter part of question 7 is already sufficiently answered. Under the law as then understood to be settled the right of said company to said lands within its limits was in said settlement conceded—

or, to be more accurate, the title was conceded to be in the State
493 for the use of the said company. This special certificate of April 25, 1863, was issued before I was appointed commissioner, and I understand, from the connection I have had with the matter as register of the State land office, and commissioner of the State, as well as from D. W. Kilbourne and Commissioner of the General Land Office, that it was issued in pursuance of the act of July 12, 1862; that the Department first ascertained the amount of land the State was entitled to under that grant, extending it to the northern boundary of the State, then deducting the lands coming within the grant which were liable to be, but had not been certified, and also deducting the amount confirmed by resolution of 1861, and that previously selected and certified on the east fork of the Des Moines River, and the excess of the 500,000-acre grant, or, in other words, retaining enough to make good these several amounts, (which were all charged to the State,) issued said certificate approximating towards, but not intended to cover quite all the State was entitled to, and the settlement was consummated on the basis insisted on by the Government (admitting these charges, and allowing their deductions;) so that while I cannot state positively that the State
494 received other lands by virtue of said certificate in lieu of the particular tracts referred to in the last question, I do say that in said settlement the State has received indemnity for said lands, either in said certificate, or in that certified on the east fork, or in the excess of the 500,000-acre grant, or in the 1,317.32 acres, which ballances the account and closes the grant under and according to said settlement.

Int. 8. In your settlement with the Secretary of the Interior, what was claimed by you and conced' by him in relation to said odd sections in the five-mile limit of the Des Moines River grant of 1846 and the railway grant of 1856, above the fork of the Raccoon River?

Ans. 8. This question already sufficiently answered.

Int. 9. In said report you speak of Messrs. Kilbourne & Mason as agents of The Des Moines Valley Railway Company, state whether or not they were agents of said company, and if they were, whether or not they, or either of them, knew that the title of the Dubuque and Sioux City Railway Company to said odd sections in the townships above named was conceded to be good by you, as agent of the State,
495 and the Secretary of the Interior, and that other lands were granted to the State in lieu thereof, and whether either of these parties selected the lands conceded by said special certificate?

Ans. 9. I think said Kilbourne was president of said company, and

also appointed by the governor as agent of the State, on account of his connection with and interest in the company, (it being considered beneficiary of the grant,) to look after the matters. He, with Judge Mason's assistance, procured the issuing of said certificate, (such is recollection,) and Mr. Kilbourne located said certificate, (but all these facts will appear, I think, more satisfactorily from the records of the State land office.) I am satisfied Mr. Kilbourne knew the terms of the settlement before and after it was completed, and that the right under the act of 1856 was conceded to the railroad companies to lands on the Des Moines River in odd sections within their respective limits, and that the State was to receive other lands in lieu thereof, although he was not present when it was made.

Int. 10. You have been register of the State land office and made the settlement above referred to. Can you state whether or not the land in township' 89 & 90, and range' 28 & 29, which lie within the five-
496 mile limits of the west side of the Des Moines River, were ever certified or allowed to the State under any other than the railway grant of 15 May, 1856, and whether or not the State, in your settlement obtained other lands in lieu thereof, and whether or not Messrs. Mason & Kilbou'ne, agents of the Des Moines Valley Railway Company, knew these facts?

Ans. 10. I cannot say, without examining the records of the State land office, whether said lands were ever certified or allowed to the State under any other *that* than the act of 1856, but my impression is that those lying in odd sections and within five miles of the river on the west side, and also within the railroad limit, have not; and, as repeatedly before stated, in the settlement, the Government accounted to the State therefor in other lands. I never had any interview with Judge Mason on the subject, that I recollect, but did with Mr. Kilbourne at different times, and learned from him that Mason had been assisting him in working the matter up. Mr Kilbourne I think knew all these facts.

Cross-interrogatories filed by the clerk.

497 In answer to the cross-interrogatories filed by the clerk, the witness answers as follows:

Ans. 1 int. I have no*t* interest whatever in this action.

Ans. 2. My statements are in the main made from personal knowledge, with my recollection refreshed by reference to the record of the transactions as contained in the reports of the State land office. And in my statements, which are not from personal knowledge, I have endeavored to show the means of my information.

Ans. 3. For anything further, I can only refer the parties to the records of the State land office.

JOSIAH A. HARVEY.

STATE OF IOWA, *Fremont County, ss:*

I, J. N. Cornish, a notary public in and for said county, certify
498 that, in pursuance of the commission hereto annexed, I caused to come before me, Josiah A. Harvey, and examined him on the interrogatories attached to said commission. The said witness, himself, under my direction, wrote each interrogatory, and wrote thereunder his answer thereto; and having completed the writing thereof, he read the same over, and then subscribed the same in my presence, and

was duly sworn to the same before me; all of which was done at my office in Sidney, in said county, on this 17 day of February, A. D. 1871.

In testimony whereof I hereunto set my hand and affixed my notarial seal the date above written.

[SEAL.] J. N. CORNISH,
Notary Public.

My fees, $7.50. Paid by Grant & Smith.

(Endorsed as follows:) U. S. circuit court. dist. of Iowa. Iowa Homestead Company vs. Des M. Nav. & R. R. Co. Deposition of Josiah A. Harvey. Filed May 9, 1871. George B. Corkhill, clerk.

499 And on this day, the 24th day of June, 1869, comes one of the defendants, Roswell S. Burrows, by Nourse & Kauffman, his att'y, and files in said cause, his answer to the complainants' bill of complaint; which said answer is in words and figures following, to wit:

500 *Answer of Roswell S. Burrows, defendant.*

In the United States circuit court for the district of Iowa.

THE IOWA HOMESTEAD COMPANY
vs.
THE DES MOINES NAVIGATION & RAILROAD Company et al } In equity.

Now comes Roswell S. Burrows, one of the defendants in the above-entitled cause, and a citizen and resident of the State of New York, and, saving and reserving unto himself all and all manner of advantages of exception to the manifold insufficiencies of the said bill, maketh answer for himself as follows, to wit:

1. That he denies each and every material allegation in said bill contained inconsistent with, and adverse to, the rights of this defendant, as hereinafter more particularly set forth.

2. Defendant further states that he is the owner in fee-simple of the lands set out in Exhibit A, and made a part of his answer.

501 Defendant further states that the said real estate in said Exhibit "A" described, was heretofore, to-wit, on or about the year 1850, set apart and reserved from sale by order of the Secretary of the Interior for the benefit of the State of Iowa, in trust for the improvement of the Des Moines River, under an act of Congress, entitled An act granting certain land to the Territory of Iowa to aid in the improvement of the Navigation of the Des Moines River in said Territory, approved Aug. 8th, 1846, and the said lands were certified among others to the State of Iowa, as accruing to said State under said grant.

Defendant further states that said lands were specially reserved from the operations of the railroad grant made by act of Congress approved May 15th, 1856, and under which plaintiffs claim title to said lands, by the following language, contained in the first section of said act, to wit: "And provided further, that any and all lands heretofore reserved to the United States by any act of Congress, or in any other manner, by

502 competent authority, for the purpose of aiding in any object of internal improvement, or for any other purpose whatsoever, be, and the same are hereby, reserved from the operations of this act, except so far as it may be found necessary to locate the routes of said rail-

roads through such reserved lands, in which case right of way only shall be granted, subject to the approval of the President of the United States."

That said lands continued so reserved from sale, entry, or pre-emption from the said year 1850 until they were certified as aforesaid to the State of Iowa, to wit, on the 10th day of March, 1852, and that no time during said period were such lands subject to or liable to pre-emption entry, or sale, nor were the said lands ever appropriated by Congress to any other purpose whatever.

Defendant further states that, afterward, to wit, on the 3rd and 18th days of May, 1858, the governor of the said State of Iowa, by deed duly authorized to be executed by the said State of Iowa, sold and conveyed, in pursuance of the trust hereinbefore set out, the said real estate to

503 The Des Moines Navigation and Railroad Company, a corporation duly created and organized under the laws of the State of Iowa; and that afterward, on the day of , 186 , The Des Moines Navigation and Railroad Company conveyed said land to this defendant.

Defendant further states that, on the 3rd day of March, 1861, Congress, by joint resolution, granted, released, and confirmed unto the State of Iowa all lands held by bona-fide grantees of said State, and that The Des Moines Navigation and Railroad and this defendant were at that time bona-fide grantees of said State of Iowa, and that the title of this defendant, as one of the grantees of the said navigation and railroad company, (a grantee of the State as aforesaid,) was further recognized and confirmed by act of Congress approved July 12th, 1862.

This defendant denies that said plaintiff has any right, title, or interest in said real estate particularly described in Exhibit "A," hereto attached, and ask' that he be permitted to go hence without day, with his costs in this behalf most wrongfully sustained.

NOURSE & KAUFFMAN,
Attorneys for R. S. Burrows, Defendant.

504 STATE OF IOWA, *Polk County, ss:*

I, A. C. Bidwell, on oath, state that I am agent for the above-named defendant, Roswell S. Burrows, for the management of his business in Iowa pertaining to said real estate described in said petition; that I am well acquainted with the facts set out in the above answer; and that the said facts therein stated are true and correct, as I verily believe.

A. C. BIDWELL.

Subscribed and sworn to by A. C. Bidwell, before me, this 22nd day of June, A. D. 1869.

S. S. ETHRIDGE,
U. S. Commissioner Dist. of Iowa.

505 EXHIBIT "A"—*List of lands in Webster County belonging to R. S. Burrows, and claimed by the Iowa Homestead Company.*

	Section.	Township.	Range.	Acres.
N. fr. ¼ N. E.	1	87	27	93.34
S. W. ¼	5	"	"	160
N. W. fr. ¼	3	"	28	178.39
All	5	"	"	663.98
S. W. ¼ & S. E. ¼	9	"	"	320
All	9	88	27	640
S. ½ of N. E. ¼	23	"	"	80
S. ½ of N. W. ¼	"	"	"	80
S. ½	"	"	"	320
All	25	"	"	640
All	33	"	"	640
N. ½	25	"	"	320
N. ½ of S. W. ¼	"	"	"	80
N. ½ of S. E. ¼	"	"	"	80
N. W. fr. ¼	3	88	28	200.46
S. ½	11	90	88	320
W. ½	23	"	"	330

506 (Endorsed as follows:) The Iowa Homestead Company vs. The Des Moines Navigation and Railroad Company. Answer of defendant Roswell S. Burrows. Filed June 24, 1869. George B. Corkhill, clerk. Nourse & Kauffman, atty' for deft. Burrows.

507 And on this day, to wit, the 19 day of October, 1869, comes the defendants Albert H. Tracy, Francis W. Tracy, and Harriet Tracy, by J. M. Ellwod, their solicitor, and file in said cause their answer to the bill of complaint, which said answer is in words and figures following, to wit:

United States circuit court, district of Iowa.

THE IOWA HOMESTEAD COMPANY, COMPLAINANT,
vs.
THE DE' MOINE' NAVIGATION AND RAILROAD Company, Samuel G. Wolcott, W'm B. Welles, Roswell S. Burrows, Edwin C. Litchfield, W'm J. McAlpine, Richard B. Chapman, Albert H. Tracy, Harriet Tracy, Electus B. Litchfield, Francis W. Tracy, Edward Wade, John Stryker, & others, defendants } In equity.

The joint and several answer of the defendants Albert H. Tracy, Francis W. Tracy, and Harriet Tracy, to the bill of complaint of The Iowa Homestead Company, complainant:

508 These defendants, Albert H. Tracy, Francis W. Tracy, and Harriet Tracy, now and at all times hereafter, saving and reserving to themselves all manner of benefit and advantage of exception to the many errors and insufficiencies in the complainants' said bill of complaint contained, for answer thereto, or unto so much or such parts thereof as these defendants are advised is material for them to answer unto, answer and say that they are informed by complainants' said bill

of complaint, and believe to be true that the said Iowa Homestead Company is a corporation created by the laws, and a citizen of the State of Iowa for the purpose of buying and selling lands in said State, but as to whether or not said corporation was duly created and organized by a full and complete observance of the requirements of the statutes of said States authorizing and providing for the organization and formation of corporations, these defendants have not sufficient knowledge or information to form a belief.

And these defendants say that, as to whether or not said complainant, by deed of purchase, beginning November 12th, 1863, acquired by
509 and through the Dubuque and Sioux City Railroad Company all the right of the said company, and the Dubuque and Pacific Railroad Company, to about fifty thousand acres of land lying on the east side of the Des Moines River, in Webster and Humbol't counties, Iowa, being the odd sections of land within the limits of the Dubuque and Pacific Railroad grant of 1856, and of the Des Moines River grant of 1846, as in complainants' bill alleged, these defendants are ignorant and uninformed, save by the said complainants' said bill of complaint, and leave complainant to proof thereof; but they expressly deny that by such deed or deeds of purchase, or otherwise, the said complainant ever acquired the right and title of the State of Iowa to the said fifty thousand acres, as in complainants' said bill claimed.

And these defendants, further answering, admit that the said De' Moine' Navigation and Railroad Company is a corporation created by the laws of the State of Iowa, and the said company and its grantees claim the said fifty thousand acres of land in the said bill of complaint, and the lists therein referred to, and thereto annexed and de-
510 scribed, or so much and such parts or portions thereof, as were certified and approved to the State of Iowa, under the act of August 8, 1846, and conveyed to the said De' Moine' Navigation and Railroad Company by the State of Iowa, and subsequently confirmed to the State by the joint resolution of March 2, 1861, and the act of Congress of July 12, 1862, as hereinafter stated and set forth; and these defendants allege and aver that the said De' Moine' Navigation and Railroad Company and its grantees claim all the lands lying in the alternate odd-numbered sections within five miles of the Des Moines River, and on the east side thereof, and in the said counties of Webster and Hamilton and Humbol't, as far north as the north line of township 92, and on the west side thereof, as far north as the second correction line, and have full and complete title thereto as hereinafter stated and set forth.

And these defendants admit the passage by Congress of the said act of August 8, 1847; that, on the 24th of February, 1847, the State of Iowa appointed a board of public works to improve the navigation of the said (Des Moines) River, and that, on the 23 day of February, 1848, R. M. Young, Commissioner of the General Land Office, addressed
511 to the secretary of the said board of public works, a letter containing the language quoted, and in complainants' bill stated and set forth.

And these defendants admit that, on or about the 17 of October, 1846, the governor of the State of Iowa was notified by James H. Piper, Acting Commissioner of the General Land Office, by letter, that, "under the grant of August 8, 1846, the Territory of Iowa was entitled to the vacant lands in the alternate sections within five miles on each side of Des Moines River, from the northern boundary of Missouri to the Raccoon Fork of the Des Moines River;" but upon information and belief they deny that the Territorial and State authorities acquies'ed in the opinion

expressed in said letter, so far as it implies that the grant only extended to the Raccoon Fork.

And these defendants admit that, on the 19 of June, 1848, the President, by proclamation, ordered into market some of the lands in the odd-numbered sections above the Raccoon Fork; that the board of public works, in Iowa, protested against this; that, on the 8 of January, 1849, the delegation in Congress from Iowa called the attention of the Secretary of the Treasury to the construction of the act of August 8, 1846, claiming that the odd sections above the Raccoon Fork,
512 which had been ordered into market by the President, belonged to the State of Iowa under said grant of August 8, 1846, and that R. J. Walker, Secretary of the Treasury, on the 2d day of March, 1849, held and decided that the said grant of August 8, 1846, extended to the source of the Des Moines River.

And these defendants admit and allege that, on the 2d of March, 1849, R. J. Walker, Secretary of the Treasury, communicated to R. M. Young, Commissioner of the General Land Office, his said decision in respect to the extent of said grant, and instructed him to be governed thereby, and that, on the 16th of June, 1849, the said Commissioner withdrew the said lands, in the said odd-numbered sections above the Raccoon Fork, from sale, pursuant and in obedience to the said construction of Secretary Walker; and on the same day the said Commissioner advised the land officers, in the State of Iowa, having in charge the sale of the public lands above the Raccoon Fork, in the State of Iowa, of the decision of the Secretary of the Treasury, and directed and instructed them accordingly to withdraw from market and withhold from sale the lands in the odd-numbered sections above the Raccoon Fork and within five miles of the Des Moines River.

513 And these defendants, further answering, admit that, on or about the 14th of January, 1850, the Commissioner of the General Land Office informed Ewing, Secretary of the Interior, that the lands charged against the State of Iowa amounted to 825,078 acres, and when the grant was adjusted, the amount between the Raccoon Fork and the source of the river was estimated to contain 900,000 acres.

And the defendants, further answering, say that as to whether or not the Commissioner of the General Land Office, on the 13th of March, 1850, submitted to Secretary Ewing three lists of lands, showing the tracts falling within the limits of the grant above the Raccoon Fork, as in complainant's bill alleged, the' are ignorant and uninformed, save by the said complainant's bill of complaint; they admit, upon information and belief, that, on the 6th of April, 1850, Secretary Ewing addressed to the Commissioner of the General Land Office the letter of which a copy in substance is set out among the exhibits annexed to complainant's printed bill, at pages 64 & 65 thereof, but they deny that the said Ewing, by said letter or otherwise, revoked or reversed the decision of Secretary Walker, and deny that he had any authority to
514 review or reverse the decision of Secretary Walker which had been acted on and carried out, and that his said letter, or any act or order of his, could effect or reverse the said decision of Secretary Walker.

And these defendants, further answering, admit that, on the 19th of July, 1850, Reverdy Johnson, Attorney General, upon submission of the question to him by the President, gave and rendered his opinion that the grant of August 8, 1846, extended above the Raccoon Fork to the source of the river; that, on the 30th of June, 1851, Crittenden, Attorney General, expressed the opinion that the grant did not extend

above the Raccoon Fork; that, on the 29th of October, 1851, Stuart, Secretary of the Interior, addressed to the Commissioner of the General Land Office the letter, of which a copy is set out among the exhibits annexed to complainant's printed bill on file, on pages 65 and 66, *of* in which he directed said Commissioner to select and report for approval a list of the alternate sections of land claimed by the State of Iowa, above the Raccoon Fork, under the said grant of August 8, 1846; and these defendants allege and aver that said Secretary Stuart, by order and direction in said letter contained, expressly and distinctly re-
515 cognized the acts of Secretary Walker in the premises as valid and binding upon the United States, and directly recognized the validity of the claim of the State of Iowa under the said grant of August 8, 1846, to the lands lying in the alternate odd-numbered sections above the Raccoon Fork and within five miles of the Des Moines River, including those claimed by the complainant in this action, as against the said De' Moine' Navigation and Railroad Company and its grantees.

And these defendants, further answering, admit that the Supreme Court of the United States, at the December term, 1859, and on or about the 9th day of April, 1860, in the case of Litchfield vs. The Dubuque and Pacific Railroad Company, held and decided that the grant contemplated by the act of August 8, 1846, did not extend above the Raccoon Fork.

And these defendants, further answering, admit and allege that, on the 30th of October, 1851, the Commissioner of the General Land Office and the Secretary of the Interior certified and approved to the State of Iowa, under the said grant of August 8, 1846, of the lands lying in the alternate odd-numbered sections above the Raccoon Fork,
516 214,391.58 acres; and, on the 10th of March, 1852, the further quantity of 143,908.37 acres; and, on the 17th of December, 1853, the further quantity of 33,142.43 acres; and, on the 30th of December, 1853, the further quantity of 12,813.51 acres.

And these defendants, further answering, say that they are ignorant and uninformed, save by the said complainant's said bill of complaint, as to whether or not the Commissioner of the General Land Office, on the 21st of March, 1856, decided that the grant of August 8, 1846, did not extend above the Raccoon Fork. Upon information and belief they admit that Attorney General Black, in his letter of November 22, 1858, expressed the opinion that the grant of August 8, 1846, did not extend above the Raccoon Fork; but, upon information and belief, they deny that the Secretary of the Interior on the 7th of May, 1858, rejected the claim of the State of Iowa to the lands above the Raccoon Fork which had been certified to the State as aforesaid.

And these defendants, further answering, admit that the Congress of the United States, on or about the 15th of May, 1856, passed and
517 enacted the act entitled "An act making a grant of lands to the State of Iowa in alternate sections, to aid in the construction of certain railroads in said State, and that a copy thereof is set out on exhibit to complainant's bill in the printed copy thereof on file, at pages 127, 128, & 129 thereof; and also admit that, on or about the 14th of July, 1856, the general assembly of the State of Iowa, passed the act entitled "An act to accept the grant and carry into execution the trust conferred upon the State of Iowa, by an act of Congress entitled 'An act making a grant of lands to the State of Iowa, in alternate sections to aid in the construction of certain railroads in said State, approved May 15, 1856,'" and that a copy of the said act of the general assembly is substantially set out in complainant's printed bill on file, at pages 129, 130, 131, 132, 133, &

134 thereof but these defendants expressly deny that, under and by the said act of Congress, and the said act of the general assembly, or either of the said acts, either the State of Iowa, or The Dubuque and Pacific Railroad Company or the plaintiff, obtained or acquired any title or interest in the lands claimed by the plaintiff in this action, which had been previously certified and approved to the State of Iowa by the
518 Commissioner of the General Land Office or Secretary of the Interior, under the said act of Congress of August 8, 1846; and these defendants expressly allege and aver that all the lands in complainant's bill of complaint designated, specified, and claimed by plaintiff, which had, previous to the passage of said act of Congress, of May 15th, 1856, been certified to the State of Iowa, under the said grant of August 8, 1846, as hereinafter stated, (being the lands lying in the alternate odd-numbered sections within five miles of the Des Moines River,) had been, and at the time of the passage of the said act of May 15th, 1856, were, expressly reserved to and by the United States, by competent authority; and by the last proviso in section one of said act were expressly reserved from the operation and effect of the said act; and, the same being so reserved, never passed to the State of Iowa, under the said act of May 15, 1856, and by the said act the State of Iowa acquired no title to the said lands for the purposes of said act, or otherwise; and the State of Iowa was not authorized by the said act of May 15, 1856, to dispose and certify, or to convey or authorize to be conveyed to the said Dubuque and Pacific Railroad Company, or
519 to any corporation, or person whatsoever, the said lands in the said alternate odd sections, embraced in the list of lands certified and approved to the State of Iowa, under the said grant of August 8, 1846, or any part, or parcel, or portion thereof.

And these defendants, further answering, say that, as to whether or not a plat of the Dubuque and Pacific Railroad Company was, on the 18th of April, 1857, presented by the governor of Iowa to the Secretary of the Interior, and the alternate sections on the line thereof designated and set apart by him to the State of Iowa, under the grant of May 15, 1856, these defendants are ignorant and uninformed, save by said complainant's bill of complaint, but, upon information and belief, they deny that the State of Iowa asked, and the Secretary of the Interior reserved; the lands, (so far as the same had been certified to the State of Iowa under the grant of August 8, 1846,) within five miles of the Des Moines River above the Raccoon Fork for the railroad, instead of the river grant.

And these defendants, further answering, upon information and belief, allege and aver that the said Dubuque and Pacific Railroad Com-
520 pany, and the Dubuque and Sioux City Railroad Company, nor either of said companies, ever complied with and performed the conditions and requirements of the said act of the general assembly of Iowa, of July 14, 1856, to entitle them to the lands in controversy in this suit thereunder, but utterly failed to complete and construct their road as and in the manner and at the time and times in said act specified; and these defendants expressly deny that, by anything in the said act of Congress of May 15, 1856, and the act of the general assembly of the State of Iowa, of July 14, 1856, contained, or by anything done by the said Dubuque and Pacific Railroad Company, or the said Dubuque and Sioux City Railroad Company, or the governor of Iowa, or the Secretary of the Interior, as in complainant's bill alleged, the State of Iowa, or the said railroad company ever acquired any title to, or interest in, the lands lying in the alternate odd-numbered sections within five

miles of the Des Moines River, and certified to the State of Iowa by the Secretary of the Interior under the said grant of August 8, 1846, as hereinafter stated and set forth.

521 And these defendants deny that, after the opinion of Attorney General Black, in 1858, the State of Iowa and the Secretary of the Interior treated the said lands certified to the State under act of August 8, 1846, as belonging to the railway and not to the river grant; and, upon information and belief, they deny that an application of The De' Moine' Navigation Company for a title as assignee of the State was refused by the Secretary of the Interior, as in complainant's bill alleged.

And these defendants, further answering, say that they are informed and believe to be true, and therefore allege and aver that the said De' Moine' Navigation and Railroad Company uniformly, after the said lands were certified to the State under the said act of August 8, 1846, and sold and conveyed to said company by said contract of June 9, 1854, and by the deeds to said company as hereinafter stated, claimed and insisted that they had and held full, absolute, and complete title to said lands; that, with the sole view of procuring evidence to said company directly of the title to said lands, said company, by Reverdy Johnson, their attorney, about the year 1856, applied to the Secretary of the Interior to issue patents for said lands directly to said company;

522 but said Secretary declined and refused to issue such patents for the reason that the United States had no title thereto, having by the certificates of said lands to the State under the act of August 8, 1846, parted with its title to the said lands.

And these defendants deny that, on the 11th of April, 1863, the Commissioner of the General Land Office certified that the Dubuque and Sioux City Railroad Company were entitled to the lands now claimed by plaintiff as purchasers of the Dubuque and Sioux City Railroad Company, and deny that the said Dubuque and Sioux City Railroad Company acquired title to said land when the certificate was given by the gov' in 1861, as in complainant's bill alleged. And these defendants, upon information and belief, allege that the certificate given by the Commissioner of the General Land Office, was given on or about February 26, 1863, a copy of which, in substance, is set out in complainant's printed bill as an exhibit, at pages 24 & 25.

And these defendants, further answering, say that, as to whether or not the Dubuque and Pacific Railroad Company in August, 1861, (or at any other time,) was merged in a new company called the

523 Dubuque and Sioux City Railroad Company, and which succeeded to all the rights and obligations of the Dubuque and Pacific Railroad Company, these defendants are ignorant and uninformed, save by the said complainant's bill of complaint; but they expressly deny that, by the completion of the said first five sections of twenty miles each, the said Dubuque and Sioux City Railroad Company, on the 25th of April, 1861, or at any other time, became, or that the said company or its grantees now is, entitled to the lands on both sides of the Des Moines River, now claimed by complainant in this action, and that these defendants are ignorant and uninformed save by said complainant's said bill, as to whether or not the governor of Iowa, on the 25 of April, 1861, certified that said Dubuque and Sioux City Railroad Company had completed the fifth continuous twenty miles of road west from Dubuque, and as to whether or not said governor, on the 29 day of July, 1865, certified that said company, on the 2d day of June, 1864, had completed the sixth section of twenty miles of said road west from Dubuque, as in complainant's bill alleged.

524 And these defendants, further answering, admit that, on or about the 9th day of June, 1854, the State of Iowa made and entered into a contract with The De' Moine' Navigation and Railroad Company for the improvement of the navigation of the Des Moines River, and to convey to said company all the unsold lands above the Raccoon Fork which had been certified to the State under the said act of August 8, 1846; that said company undertook and entered upon said work, and, as the improvement progressed, the State, by its proper officers, issued to said company certificates of sale of about 205,489.64 acre' of the said lands, including those claimed by plaintiff east of the Des Moines River. And these defendants expressly deny that the Commissioner of the General Land Office and the Secretary of the Interior refused to certify or convey the said lands to the State of Iowa or The De' Moine' Navigation and Railroad Company, and allege and aver that all said lands were duly certified and approved to the State under the act of August 8, 1846, by said Commissioner and Secretary prior to the date of said contract with the State June 9th, 1854.

And these defendants, further answering, deny that the State of Iowa, and the said De' Moine' Navigation and Railroad Company
525 in the settlement made under and in pursuance of the joint resolution of March 22, 1858, settled difficulties arising out of the construction of the grant of August 8, 1846, and they allege and aver that the said State then claimed to own and have the title to all the unsold lands which had been certified to it under the grant of August 8, 1846, and that the settlement by and between the State and the said company, in pursuance of which the State conveyed the said lands to said company, was simply a settlement of the claims made by said company for monies expended, and work done, and materials furnished by said company under its said contract, and the other claims referred to in said joint resolutions as herein stated and alleged.

And these defendants, further answering, admit the passage, by Congress, of the joint resolution of March 2, 1861, but they deny that the said resolution was construed by the State of Iowa and Congress, through their executive officers, or otherwise refer only to lands above the Raccoon Fork conveyed to settle's and other individuals, and not to include the lands claimed by plaintiff in this action; and they expressly
526 deny that, at the date of said resolution, the Dubuque and Sioux City Railroad Company had acquired from the State the title to the lands now claimed by the plaintiff in this controversy as against The De' Moine' Navigation and Railroad Company and its grantees, or any part or portion thereof.

And these defendants, further answering, admit that, at the date of said act of July 12, 1862, in said complainant's bill mentioned, the Supreme Court in the case of Litchfield vs. The Dubuque and Pacific Railroad Company had decided that the grant of August 8, 1846, did not extend above the Raccoon Fork; but they deny that such court, by implication or directly in said cause, held or decided that the said Dubuque and Pacific Railroad Company was entitled to the lands in dispute herein under the act of 1856, or otherwise; but, on the contrary, they affirm and allege that the said Supreme Court, in the case of Wolcott against The De' Moine' Navigation and Railroad Company, expressly held and decided that the said railroad company acquired no title to or interest in the said land whatever, under the said act of May 15, 1856, and that the same, by the terms of the proviso and exception in said act contained, were expressly reserved from the operation of said act, and from the grant therein contained.

And these defendants, further answering, admit that the State
527 of Iowa appointed Josiah A. Harvey, register of the State land-office, a commissioner to adjust the claims of the State under the grants made to the State, and that the act appointing said Harvey such commissioner was passed and approved March 30, 1866; that said Harvey, as such commissioner, as these defendants are informed, and believe to be true, assumed on behalf of the State to make adjustments of the several grants to the State, but whether such adjustment is truly and correctly set out in complainant's bill these defendants have no knowledge or information save that implied by the allegations in said complainant's said bill of complaint; but these defendants expressly allege and aver that such assumed and pretended adjustment was not made until long after the title to the lands in dispute had, by the joint resolution of March 2, 1861, and the act of July 12, 1862, (heretofore referred to,) been confirmed to the State, and to its grantees, and not until the month of June, 1866; and they expressly allege that, at the time of such assumed and pretended adjustment, the title to the lands in dispute had wholly and absolutely passed from the State of Iowa, and then vested in the De' Moine' Navigation and Railroad Company and its grantees;
that the deeds or patents executed by the State to the said com-
528 pany, and by said company to its several grantees, as herein stated, covering the lands in dispute as against these defendants, were then, and since have been, and still are, operative and binding, and in full force, having never been judicially set aside, and were and are conclusive as against the State, and that neither the State of Iowa nor its agent, the said Harvey, nor the census board of said State, nor the Commissioner of the General Land-Office, and Secretary of the Interior, had any power, authority, or control over said lands in dispute, and that any adjustment made by them, or any of them, in respect to the said lands, did and could in no way operate to impair or affect or disturb the title of the said De' Moine' Navigation and Railroad Company and its grantees to the said lands, but that such adjustment, so far as said company and its grantees are concerned, was, and is, of no binding force or obligation whatever, but was wholly and entirely nugatory and void.

And these defendants, further answering, expressly deny that the lands referred to and covered by the resolution of March 2, 1861, were
different lands from those claimed by the De' Moine' Navigation
529 and Railroad Company; and they aver and allege that the lands in dispute herein, so far as conveyed to said company, are part and parcel of the lands in said joint resolution referred to, as having been certified to the State improperly by the Department of the Interior as part of the grant, by act of Congress, approved August 8, 1846, and held by bona-fide purchasers under the State of Iowa, and that the confirmation of the same to the State of Iowa, by the said joint resolution, vested the title therein in the grantees of the State, the said De' Moine' Navigation and Railroad Company and its grantees absolutely and beyond all control of the State or of the United States.

And in support of the proposition that the lands included in and covered by the joint resolution of Mareh 2, 1861, were the same lands now claimed by the De' Moine' Navigation and Railroad Company and its grantees, including those in dispute in this action, these defendants allege and aver that the Commissioner of the General Land-Office, on the 26th day of June, 1862, for the purpose of enabling the Land Department at Washington to determine what parts and portions of the said lands which had been "certified to the State' had by the State

530 been conveyed to bona-fide purchasers under the State, addressed to the governor of Iowa an official letter, requesting the governor "to furnish his office with a list of the tracts referred to in said resolution, and held by bona-fide purchasers under the State of Iowa, on the 2d of March, 1861, and to certify the same under his official seal, specifying in each case the date of sale, name of purchaser, consideration and date of patent or deed or conveyance by the State," and that a copy of said letter is set out among the exhibits to complainant's bill, on page 105 of the printed bill of complaint, and to which letter these defendants pray leave to refer; that, afterwards, in compliance with the request of said Commissioner, the governor of Iowa did furnish to said Commissioner the lists called for by the letter of the said Commissioner, duly certified, which said lists, so furnished and certified by the governor, are now on file in the office of the Commissioner of the General Land-Office, and to which, for greater certainty, these defendants pray leave to refer, and that said lists covered and embraced and included all the lands now claimed by plaintiff in this action as against the said De' Moine' Navigation and Railroad Company and its grantees.

And these defendants, further answering, admit that, after the passage of the act of July 12, 1862, Samuel G. Wolcott, a citizen of
531 New York, claiming the east half of section 17, township 88, (instead of 87, as in complainant's bill alleged,) range 27 west, in said county of Webster, under purchase from the said De' Moine' Navigation and Railroad Company, brought suit, in the circuit court of the United States for the southern district of New York, against said company for a breach of the warranty of title, and that in said action the title of the said De' Moine' Navigation and Railroad Company was, by the Supreme Court of the United States, held good and valid; and these defendants, upon information and belief, deny that the said suit was designed and intended by the parties thereto as an agreed case to settle the construction of an act of Congress, in which bill the plaintiff and defendant had the same interest adversely to the claims of the plaintiff in this suit, and also, upon such information and belief, denies that both parties jointly paid the costs, and that the attorneys employed were both really interested on the same side, and that the object was to obtain an adjudication of the rights of the plaintiff and others, who were like situated, and who were not before the court; and the' expressly
532 allege and aver that the said suit was commenced in good faith, and for the purpose indicated by the pleadings therein, and was conducted without collusion and without any fraud on the rights of the plaintiff or others interested or claiming to be interested therein.

And these defendants, further answering, allege and aver that, after the commencement of the said suit by said Wolcott against the said De' Moine' Navigation and Railroad Company, and before the same was determined, and while the same was pending, the said Dubuque and Sioux City Railroad Company, under which the plaintiff herein claims title, applied to the court to intervene as a party interested in the controversy therein; that such application was granted, and said Railroad Company made a party defendant; that the said Railroad Company, the grantors of the plaintiff herein, as these defendants are informed and believe to be true, and therefore allege and aver, made such application to be made party defendant, and was so made such party, with the full knowledge and consent, and at the desire and instance and request, of the said Iowa Homestead Company, the complainant in this action, for the purpose of protecting the interests of said Homestead Com-
533 pany, as well as those of the said Railroad Company in the prem-

ises; that, on application, time was given to said Railroad Company to prepare for the trial thereof; that the said Railroad Company, as such party, was fully heard and represented, and its claims to said lands, and the title thereto, litigated by said company, and passed upon and decided by said Supreme Court adversely to the claims of said Railroad Company; that in such action the said Railroad Company relied upon and urged the same title or claim to title as is now urged and relied upon by the plaintiff herein; that the decision of the said court in the said action is conclusive and decisive, and res adjudicata as far as the claims of plaintiff in this action is concerned; and these defendants aver and insist that the said action and the decision of the said court therein is a full and perfect and a complete bar to the maintenance of the action by the plaintiff, and decisive of the plaintiff's claim herein.

And these defendants, further answering, admit that, after the settlement of the State with the De' Moine' Navigation and Railroad Company in 1858, the said De' Moine' Navigation and Railroad Company conveyed certain parcels of the lands claimed by plaintiff to Sam-
534 uel G. Wolcott, W'm B. Welles, Roswell Burrows, Edwin C. Litchfield, W'm J. McAlpine, Richard B. Chapman, Electus B. Litchfield, Edward Wade, and John Stryker; but they deny that the said De' Moine' Navigation and Railroad Company conveyed any portion of said lands to these defendants, or either of them; and they allege and aver that the said De' Moine' Navigation and Railroad Company, on or about the day of , conveyed to Albert H. Tracy, the father of these defendants, Albert H. & Francis W. Tracy, and the husband of the defendant, Harriet Tracy; and these defendant', Albert H. Tracy, Francis W. Tracy, and Harriet Tracy, hold and claim title to certain of the said lands claimed by complainant as heirs and legatees and devisees of the said Albert H. Tracy, deceased, to whom the said De' Moine' Navigation and Railroad Company conveyed as aforesaid. And these defendants allege and aver that the said Albert H. Tracy, deceased, under whom these defendants claim title as aforesaid, as well as the other grantees of said company, were and are bona-fide purchasers of the tracts respectively conveyed to them by the said De' Moine' Navigation and Railroad Company under the State of Iowa; and they expressly deny the allegations in complainant's bill of complaint, averring that the said defendants, grantees of said com-
535 pany, or the said Albert H. Tracy, deceased, are not bona-fide purchasers of the tracts conveyed to them respectively.

And these defendants, further answering, deny that the defendants, who are purchasers from the De' Moine' Navigation and Railroad Company, received or hold the title to the lands respectively claimed by them for their share or shares of stock in said corporation, as in complainant's bill alleged; and they deny that they, or either of them, are purchasers with notice of complainant's alleged equities; and they expressly allege and aver that the said De' Moine' Navigation and Railroad Company was and is a bona-fide purchaser of all the lands conveyed to it by the State of Iowa as hereinafter stated, including those in dispute in this action, for a good and valuable consideration, without notice that such consideration is found and appears in the said contract between the State of Iowa and the said company, under date of June 9, 1854, herein and in complainant's bill referred to; and the work and labor performed and the expenditures incurred by said company thereunder, and the further consideration set forth, and appearing in the said joint resolution of March 22, 1858, and the settlement thereunder; that the said act of May 15, 1856, which complainant

claims to be the source and foundation of his title, was not
536 passed until nearly two years after the date of said contract between the State and said company; that prior to and at the time of the passage of the joint resolution of March 22, 1858, and the settlement thereunder, and the execution of deeds or patents of the said lands, by the State to said company, as herein stated, neither the agents and officials of the United States, nor the Dubuque and Pacific Railroad Company, nor the Dubuque and Sioux City Railroad Company, nor their grantees, had ever made or asserted any title whatever to any of the lands so sold and conveyed to the De' Moine' Navigation and Railroad Company as herein stated, but the same were then held and claimed by the State under the grant of August 8, 1846, and not otherwise.

And these defendants, further answering, say that, as to the allegations in said complainant's said bill of complaint, touching and relating to the claim and title of the Des Moines Valley Railroad Company to parts and portions of the lands claimed by said company and by the plaintiff in this action, (except so far as the same are conferred by the joint resolution of the general assembly of the State of Iowa, of March 22, 1858, and set forth as an exhibit to complainant's bill,) these defendants are ignorant, are uninformed, save by the said
537 complainant's said bill of complaint, and as to those allegations, they leave the complainant to make such proof as he shall be advised is material and necessary, and these defendants disclaim all title to or interest in such parts and portions of said lands.

And these defendants, further answering, say that they admit that the copies of instruments annexed as exhibits to the complainant's bill of complaint, so far as the same are pertinent and bear upon the controversy between the plaintiff and the De' Moine' Navigation and Railroad Company and its grantees herein, are substantially copies of the originals of which they respectively purport to be copies.

And these defendants, further answering, deny that the title of the complainants to the lands claimed by these defendants and by the De' Moine' Navigation and Railroad Company and its grantees is superior and paramount to that of the said company and its grantees, and they expressly deny that the plaintiff, by reason of the matters in said complainant's bill of complaint contained, as against the said De' Moine' Navigation and Railroad Company and its grantees, has any title
538 whatever to the said lands claimed by the said company and its several grantees respectively.

And these defendants, further answering, say that as to whether or not the said complainant and its vendees have been in possession of and paid taxes on the lands claimed by them, since 1861, to the amount of $80,000, these defendants are ignorant and uninformed save by the said complainant's bill of complaint, but they expressly aver that the possession of the said lands by the said complainant and its vendees, since 1861, is and has been unauthorized and wrongful; and that the said complainant should be required to account for the use and rents and and profits thereof to the proper owners, respectively, during the time they have been in such possession, ; and they, also, expressly allege and aver that all taxes whatsoever paid by said complainant have been paid by complainant voluntarily, with a knowledge of all the facts, and that the complainant is not entitled to have the same or any part thereof refunded.

And these defendants, further answering, deny that the defendants in this action have commenced actions at law, in the court, against

539 persons claiming title through plaintiff or otherwise to eject them from lands owned by the plaintiff, but they admit andt aver that the said defendants have commenced action in the distric court of the counties of Webster and Hamilton, in their respective name, both at law and in equity, against persons in possession and per sons claiming title, to recover possession or to quiet title to the tracts of said land claimed by said defendants, respectively, in said counties of Webster and Hamilton.

And these defendants, further answering, allege and aver that, on the 8th of August, 1846, the Congress of the United States passed the act entitled "An act granting certain lands to the Territory of Iowa, to aid in the improvement of the navigation of the Des Moines River, in said Territory;" that by the first section thereof there was granted to the said Territory the one equal moiety, in alternate sections, of the public lands, (remaining unsold, and not otherwise disposed of, encumbered, or appropriated,) in a strip five miles in width on each side of said river, to be selected within said Territory by an agent or agents to be appointed by the governor thereof, subject to the approval of the Secretary of the Treasury of the United States; that by the
540 fourth section of said act, it was enacted and provided "That whenever the Territory of Iowa shall be admitted into the Union as a State the land hereby granted for the above purpose shall be and become the property of said State for the purpose contemplated in this act and no other: *Provided*, the legislature of the State of Iowa shall accept the said grant for the said *for the said* purpose;" (and to which said act, for greater certainty, these defendants refer.) That, subsequently, to wit, in December, 1846, the said Territory of Iowa was admitted into the Union as a State, and that, after its admission as such, the State of Iowa, by a joint resolution of the general assembly thereof, passed and approved January 9, 1847, accepted the said grant for the purpose in said act mentioned and specified.

And these defendants further show that, pursuant to and in accordance with the provision of the said act of August 8, 1846, the governor of Iowa appointed agents, who selected, under the said act, the lands situated and lying in the alternate odd-numbered sections within the limits of the said grant, for and in behalf of the State, and that such selections when made were duly reported to the Commis-
541 sioner of the General Land-Office, and were duly approved by him, and by the Secretary of the Treasury of the United States; that such selections and approval were made in the year 1846, and after such approval, and on the 17th day of October, 1846, the Commissioner of the General Land-Office instructed the register and receiver in Iowa having charge and control over said lands to reserve from sale or entry of any kind all the unsold and unappropriated lands in the sections selected by the State of Iowa as aforesaid; that, on the 23 day of February, 1848, the Commissioner of the General Land-Office held and decided that under said grant, in said act of August 8, 1846, contained, the State of Iowa was entitled to the alternate sections within five miles of the Des Moines River throughout the whole extent of that river within the limits of Iowa, and that such decision is found and contained in the letter of Richard W. Young, Commissioner, a copy whereof is set out in the printed bill of complaint, at pages 56 & 57 thereof, and to which these defendants, for greater certainty, pray leave to refer.

And these defendants, further answering, allege and aver that,
542 on the 2d day of March, 1849, the Secretary of the Treasury of the United States held and decided that the said grant, in said

act of August 8, 1840, contained, and thereby contemplated, "extended on both sides of said river from its source to its mouth, but not to lands on said river in the State of Missouri," as will appear more fully by the letter of R. J. Walker, Secretary of the Treasury, to A. C. Dodge and others, a copy whereof is set out in the printed bill of complaint, on page 61 thereof, and to which these defendants, for greater certainty, pray leave to refer; that, in pursuance and in accordance with the said decision of the Secretary of the Treasury, the said Commissioner of the General Land-Office, on the 1st day of June, A. D. 1849, directed and instructed the said register and receiver of the public lands at Iowa City, in the State of Iowa, to withhold from sale all lands situated in the odd-numbered sections within five miles of that (Des Moines) River, above the Raccoon Fork, as will more fully appear by the letters of R. J. Walker to R. M. Young, Commissioner, and R. M. Young, Commissioner, to register and receiver at Iowa City, copies of which are set out in the printed bill of complaint, at page 62 thereof, and to which, for greater certainty, these defendants pray leave to refer; that such
543 direction and order of the Commissioner of the General Land-Office was received by register and receiver of the United States Land-Office at Iowa City on the 16th day of June, 1849, and the said order was adopted and approved by the Secretary of the Treasury of the United States, and by all the other officers of the United States, including the heads of departments having the charge and control of the public lands, and the same was continued, carried out, enforced, and acted upon by all the succeeding Commissioners of the General Land-Office, and by all succeeding Secretaries of the Treasury and of the Interior, having charge and control of the public lands, until the said lands lying in such alternate odd-numbered sections were duly certified and approved to the State of Iowa, under and for the purposes of said grant of August 8, 1846, as more fully hereafter stated, as will more fully appear by reference to the original letters, orders, and decisions of said Commissioner and Secretary referred to, and to which, for greater certainty, these defendants pray leave to refer.

And these defendants, further answering, allege and aver that all of the said lands which had been surveyed, lying in said alter-
544 *alter*nate odd-numbered sections above the Raccoon Fork, were, by the Commissioner of the General Land-Office, and by the Secretary of the Interior, in October, 1851, March, 1852, December, 1853, and January, 1854, duly certified and approved to the State of Iowa as having passed to said State under the said act of August 8, 1846, by lists or schedules thereof duly certified and approved and delivered to the State of Iowa by the said Commissioner of the General Land-Office, under and with the approval and endorsement of the Secretary of the Interior, as will more fully appear by said certified lists, to which, for greater certainty, these defendants pray leave to refer.

And these defendants, further answering, allege and aver that the said Commissioner and Secretary of the Interior were the officers by law authorized and charged with the duty of approving and certifying the said lands to the State under said grant, and that the lists or schedules so certified and approved to the State of Iowa under said grant, embraced and included and contained and covered the lands claimed by the complainant in this action.

And these defendants further allege that the said lists and
545 the certificate and the approval thereof, and of the lands therein described to the State by the said Commissioner and the Secretary of the Interior, under the said grant of August 8, 1846, as afore-

said, have never been recalled, revoked, cancelled, or annulled, but are still outstanding and operative, and in full force, and have since been fully confirmed by the Congress of the United States, by a joint resolution thereof approved March 2, 1861, and by an act thereof passed and approved July 12, 1862; that *as* the time the said certified lists or schedules were prepared by the Commissioner of the General Land-Office, the lands therein were duly marked and entered upon the books and plats of the General Land-Office as having been granted to the State of Iowa for the purpose of the improvement of the Des Moines River under the said act of August 8, 1846, and the same, since the said order of the said Commissioner on the 1st day of June, 1849, as aforesaid, have always and continually been considered, held, and treated by the several departments of the Government as withheld and reserved from grant, sale, private pre-emption and homestead entry; that said
546 lands, in fact, since the 1st day of June, 1849, have been legally and continuously by the United States, by its duly-constituted officers and departments, and the said order of reservation has never been recalled or annulled; that at various times and dates since the said 1st day of June, 1849, the Commissioner of the General Land-Office, and the Secretary of the Interior, being thereunto by law duly authorized and empowered, have recognized and approved and affirmed and continued the said order of reservation, and the same is still in force, all which will more fully appear by the respective and several orders and letters and official papers and documents of said offices relating to the matter of such reservation, and to which, for greater certainty, these defendants pray leave to refer.

And these defendants, further answering, allege and aver that, subsequent to such reservation aforesaid, and after said lands were so certified and approved to the State of Iowa under the said grant of August 8, 1846, as aforesaid, and on or about the 9th day of June, 1854, the State of Iowa entered into a contract, in writing, with said defendants, the De' Moine' Navigation and Railroad Company, for the sale, transfer, and conveyance of all the said lands in said certified and
547 approved lists or schedules contained and described, (except such parts and portions thereof as the State had sold and disposed of prior to the 23 day of December, 1853,) and to which said contract, for greater certainty, these defendants pray leave to refer.

And these defendants further allege that, afterwards, for the purpose of a settlement with the De' Moine' Navigation and Railroad Company under said contract aforesaid, the general assembly of the State of Iowa, on the 22 day of March, 1858, passed and adopted the joint resolution, entitled "Joint resolution containing propositions for a settlement with the De' Moine' Navigation and Railroad Company," a copy whereof is set out in the printed bill of complaint, at pages 116, 117, 118, & 119, and to which, for greater certainty, these defendants pray leave to refer; that the said De' Moine' Navigation and Railroad Company accepted the proposition for the settlement in said joint resolution contained, in the manner therein specified and provided, and duly performed and complied with all the terms and conditions imposed upon it, in and by said resolution, and in consideration thereof, and of the said contract; and the work done by said company thereunder
548 and in pursuance of said joint resolution and settlement thereunder, the State of Iowa, on or about the 3d day of May, 1858, by its deeds or patents duly executed and authenticated, and delivered, granted, sold, and conveyed to the said company, in fee-simple, all the said lands in said certified lists described which had not been sold by

the State under the said grant of August 8, 1846, (excepting about twenty-five thousand acres lying immediately above the Raccoon Fork,) including the lands lying in said counties of Webster and Hamilton and claimed by the complainant in this action, as will fully appear by reference to said patents or deeds, and to which these defendants pray leave to refer.

And these defendants, further answering, allege and aver that the said patents or conveyances from the State were made, executed, and delivered by the proper officers, under the said joint resolution and the authority of the State, and upon a good and a valuable consideration, and that the said company thereby became and was and is a bona-fide purchaser of the said lands under the State of Iowa; that subsequent to such conveyance to the De' Moine' Navigation and Railroad Company by the State of Iowa aforesaid, the said company, for
549 a valuable and adequate consideration, to it paid by Albert H. Tracy, deceased, under whome these defendants hold and claim, duly bargained, granted, sold, and conveyed to said Albert H. Tracy, deceased, said lands in Webster and Hamilton counties, the several tracts, parcels and portions thereof now claimed by these defendants, and now claimed in this action by the complainant, as will more fully appear by reference to the deeds from said company to said Albert H. Tracy, deceased, and to which these defendants pray leave to refer; and that the said Albert H. Tracy, deceased, was a bona-fide purchaser of said tracts so conveyed to him by said company under the State of Iowa.

And these defendants, further answering, allege and aver that, at the December term of the Supreme Court of the United States for the year 1859, and late in the spring of 1860, the said court held and decided that the grant contained in and contemplated by said act of August, 1846, did not extend above the Raccoon Fork; that at the subsequent session of the Congress of the United States that body, for the purpose of protecting the purchasers under the State, including the De' Moine' Navigation and Railroad Company, and its grantees,
550 and of carrying out and giving to said act of August 8, 1846, the construction and interpretation which had been given to said grant by the Commissioner of the General Land Office, and the Secretary of the Treasury and the other officers, as aforesaid, and of confirming the title of the same in the State and its grantees under the act of August 8, 1846, on the 2 of March, 1861, passed and adopted the "joint resolution to quiet titles in the State of Iowa," a copy whereof is set out in complainants bill of complaint, at page 120 thereof.

And these defendants, further answering, allege and aver that, for the purpose and with the design and intent of extending the said grant of August 8, 1846, to the northern boundary of the State, and of confirming the same, and the title to the State, and its grantees thereunder, and for the further purpose of giving and adopting and carrying out the construction which had been placed upon and given to said act of August 8, 1846, by the said several officers and departments of the United States, and protecting The De' Moine' Navigation and Railroad Company and the grantees of the State, on the 12 day of July, 1862, passed and enacted the act entitled "An act confirming a land claim in the State of
551 Iowa, and for other purposes," a copy whereof is in substance set out in complainant's said bill of complaint, on page 126 thereof, and to which said act these defendants refer.

And these defendants further answering, expressly allege and aver that by the said act of August 8, 1846, the reservation thereunder as

aforesaid, the acts of the several officers and departments of the United States and the State of Iowa aforesaid, the said contract of June 9, 1854, between the State of Iowa and said De' Moine' Navigation and Railroad Company, the joint resolution of the general assembly of the State of Iowa of March 22, 1858, and the settlement and conveyances by the State aforesaid, the joint resolution of Congress of March 2, 1861, and the act of Congress of July 12, 1862, directly extending and confirming the grant of August 8, 1846, as aforesaid, and the other matters above set forth, the De' Moine' Navigation and Railroad Company acquired and obtained the full, complete, absolute, and undefeasable title to all the lands lying in the said counties of Webster and Hamilton, claimed by the complainant in this action as against said company and its grantees; and that said company and its several grantees
552 of tracts and parcels thereof now have and hold and possess the full, complete, and absolute title thereto, and are entitled to have, hold, possess, and enjoy the respective tracts covered by their respective deeds.

And these defendants, further answering, deny that, under the said act of May 15, 1856, in said complainant's bill of complaint mentioned and referred to, and the act of the general assembly of the State of Iowa, approved July 14th, 1856, and also in complainant's said bill of complaint referred to, or either of said acts, the State of Iowa acquired any title as trustee or otherwise to the said lands in complainant's bill charged to be claimed by the De' Moine' Navigation and Railroad Company and its grantees, and also in said bill claimed to be the property of complainant as against said De' Moine' Navigation and Railroad Company; and these defendants expressly aver and insist that all of the said lands in the alternate odd-numbered sections within five miles of the Des Moines River, and within the limits of the grant to the State for the use of the Dubuque and Pacific Railroad Company, as contemplated by said act of May 15, 1856, were expressly reserved, and never in any wise passed to the State under the said act, as trustee or
553 otherwise, in any manner whatever; and they allege and aver that the title to the said lands in such odd-numbered sections is now, and for a long time has been, by reason of the matters in this answer stated and set forth, fully, completely, and absolutely vested in the said De' Moine' Navigation and Railroad Company and its grantees, and that, as against the claim and title of the said company and its grantees, the said complainant has no title to or interest in the said lands whatsoever.

And these defendants deny that the said complainant is entitled to the relief prayed in his bill of complaint herein, or any part thereof.

And these defendants say that they severally deny each and every material allegation in the complainant's bill of complaint contained, not hereinbefore well and sufficiently answered, confessed and avoided, traversed or denied, except the allegations relating to the Des Moines Valley Railroad Company, and the lands claimed by said company, and in which these defendants claim no interest.

All of which matters and things these defendants are ready to
554 aver, maintain, and prove as this honorable court may direct, and they pray that, by reason of the several matters aforesaid, the title of the defendant, the De' Moine' Navigation and Railroad Company, to the lands herein claimed by said company be by the decree of this court confirmed, and in all things held and declared valid and paramount, and that the respective titles of the other defendants, named as joining in this answer, to the several tracts claimed by them respect-

ively be also by decree of this court confirmed and held and declared valid and paramount and absolute, and that these defendants may have such other and further relief as is agreeable to equity and the practice of this court, and that they be hence dismissed with their costs herein most wrongfully sustained.

J. M. ELLWOOD,
Sol's for Defendants.

D. V. FINCH,
Of Counsel.

555 STATE OF NEW YORK,
Northern District of New York, County of Erie, ss:

Albert H. Tracy, of Buffalo, in said county of Erie, being duly sworn, deposed and says that he is one of the defendants in the foregoing answer named; that he has read the said answer and knows the contents thereof; that the said answer is true, of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters, he believes it to be true.

ALBERT H. TRACY.

Subscribed and sworn to before me, by Albert H. Tracy, this 29th day of September, A. D. 1869.

N. J. HALL,
District Judge of the U. S. for the Northern District of New York.

(Endorsed as follows:) U. S. circuit court. The Iowa Homestead Co. vs. De' Moine' Nav. & R. R. Co., W'm B. Welles, & others. Answer of Albert H. Francis, W. & Harriet Tracy. Filed Oct. 19, 1869. George B. Corkhill, clerk. J. M. Ellwood, sol's for def'ts.

556 And on this day, to wit, the 2nd day of August, 1869, comes the def'ts, The Des Moines Navigation & R. R. Company, Sam'l G. Wolcott, E. C. Litchfield, W'm J. McAlpine, Richard B. Chapman, Electus B. Litchfield, Edward Wade, and John Stryker, by Ellwood, solicitor, and file in said cause the following answer to the complainant's bill of complaint, to wit:

United States circuit court. District of Iowa. In equity.

THE IOWA HOMESTEAD COMPANY, COMPLAINANT,
vs.
THE DE' MOINE' NAVIGATION AND RAILROAD Company, Samuel G. Wolcott, W'm B. Wells, Roswell S. Burrows, Edwin C. Litchfield, William I. McAlpine, Richard B. Chapman, Albert H. Tracy, Francis M. Tracy, Harriet Tracy, Electus B. Litchfield, Edward Wade, John Stryker & al., defendants.

The joint and several answer of the De' Moine' Navigation & Railroad Company, Samuel G. Wolcott, Edwin C. Litchfield, W'm J. McAlpine, Richard B. Chapman, Electus B. Litchfield, Edward Wade, & John Stryker, defendants to the bill of complaint of the Iowa Homestead Company, complainant.

These defendants, The De' Moine' Navigation and Railroad Company, Sam'l G. Wolcott, Edwin C. Litchfield, W'm J. McAlpine, Richard B. Chapman, Electus B. Litchfield, Edward Wade, and John Stry-
557 ker, now and at all times hereafter saving and reserving to themselves all manner of benefit and advantage of exception to the many errors and insufficiencies in the complainant's said bill of complaint contained, for answer thereunto, or to so much and such parts and portions thereof as these defendants are advised is material for them make answer unto, answer and say, that the foregoing and annexed answer of W'm B. Wells herein, save as herein otherwise stated and set forth, truly and correctly sets out all the facts, and contains all the averments and allegations relied upon by these defendants and each and every of them, as a defence to the said complainant's said bill of complaint; that the said answer of said Wells, and the admissions and denials, and affirmative allegations therein contained are true to the best knowledge and belief of these defendants; and that these defendants adopt the said answer of the said Wells as their answer to the complainant's said bill of complaint, save and except as herein otherwise stated and set forth.

And these defendants, further answering, allege and aver that all the lands in and by the complainant's bill claimed to be in dispute by and between the complainant and these defendants, were by
558 the State of Iowa duly granted and conveyed to the said De' Moine' Nav. & R. R. Co. by the State of Iowa as in the said answer of the said William B. Wells fully stated and set forth, and that, subsequent to such conveyance by the State to the said De' Moine' Nav. & R. R. Co., the said Co. bargained, sold, granted, and conveyed to these defendants respectively seperate and distinct tracts and parcels of said lands, claimed by complainant, as will more fully appear by reference to the deeds or conveyances executed by said co., to these defendants respectively, and to which several deeds for greater certainty these defendants pray leave to refer; and that each and every of these defendants is a bona fide purchaser, under the State of Iowa, of the tract or tracts respectively conveyed to him by said co., and that he has the full, complete, and indefeasible title thereto.

And these defendants deny that the said complainant is entitled to the relief claimed in his bill of complaint or any part or portion thereof, and aver and insist that, by reason of the matters above and in the said answer of W'm B. Wells adopted and made a part
559 hereof contained, the title of these defendants to the lands in dispute claimed by them respectively is perfect and absolute.

All which matters and things these defendants are ready to aver, maintain, and prove, as this honorable court shall direct, and they pray that their respective titles to the tracts claimed by them, respectively, may be confirmed and approved and declared valid; and that they be hence dismissed with their costs herein most wrongfully sustained.

FINCH & RIVERS & J. M. ELWOOD,
Sol'rs for Defendants above named.

STATE OF NEW YORK,
Oneida County, ss:

I, James M. Ellwood, of Des Moines, in the State of Iowa, being duly sworn, do depose and say that I am the solicitor for the defendants named in the foregoing answer; that I have, for several years last
560 past, acted as att'y for the De' Moine' Nav. & R. R. Co. and some of its grantees in litigations touching and concerning their title

to the lands claimed by them under the conveyance by the State of Iowa to said co., and, as such att'y, have become acquainted with the facts in detail upon which these defendants' claim of title rests; that I am acquainted with the records upon which most of the facts and allegations in the foregoing answer contained are based; that I have read the foregoing answer, and also the said answer of W'm B. Wells, made part thereof, and know the contents of the same, and that I believe the denials, admissions, allegations, and averments in the foregoing answer, and in the answer of said W'm B. Wells, adopted and made part of the above answer, to be true.

J. M. ELLWOOD.

Subscribed and sworn to before me, this 5th day of August, A. D. 1869.

[SEAL.] M. M. BURLISON,
Notary Public in and for Oneida Co., N. Y.

(Endorsed as follows:) Filed August 2, 1869. George B. Corkhill, clerk. Finch & Rivers & J. M. Ellwood, sol'rs for def'ts.

561 And on this day, to wit, the 19th day of October, A. D. 1869, comes the defendants, The Des Moines Valley Railroad Company, by H. Strong, its attorney, and files its answer to the bill of complaint herein, which said answer is in words and figures following to wit:

United States circuit court, district of Iowa.

IOWA HOMESTEAD COMPANY
vs.
THE DE' MOINE' NAV. & RAILROAD CO., Edwin C. Litchfield, Roswell S. Burrow', et al.

Now comes The Des Moines Valley Railroad Company and say that they have an interest in the said land in controversy in this suit, as shown in the annexed answer, which they move this court they be allowed to file in said cause, and, in order that their rights therein may be noticed by a decree of this court, that said R. R. Co. be allowed to defend their title, and may be made party defendant in said cause.

562 DES MOINES VALLEY R. R. CO.,
By H. STRONG, *Att'y.*

(Endorsed as follows:) 121, ch'y. Iowa Homestead Company vs. Des M. Nav. & R. R. Co. & others. Motion. Filed Oct. 23, 1869. George B. Corkhill, clerk.

An act prescribing the terms and conditions on which the State will relinquish and convey to the Des Moines Valley Railroad Company certain rights and privileges in respect to the resu'ption of lands heretofore granted to said company.

Whereas, by act of Congress approved August 8, 1846, there was granted to the Territory of Iowa certain lands to aid in the improvement of the Des Moines *Valley* River, in said Territory, which grant the State of Iowa, by joint resolution of the general assembly, ap-
563 proved January 2, 1847, accepted for the purpose therein specified; and

Whereas the general assembly of the State, by an act approved March 22, 1858, granted such portion of said land as had not been previously disposed of to the Keokuk, Fort Des Moines & Minnesota Railroad Company, to aid in the construction of a railroad from the city of Keokuk, up and along the valley of the Des Moines River; by way of the city of Des Moines, to the northern line of the State, in the direction of the southern bend of the Minnesota or St. Peter's River; and providing that said grant should become operative when the consent of Congress to the diversion of said lands should be obtained, or the title thereto vested in the State; and also imposing upon said company, in case of its acceptance of said grant, certain conditions and restrictions, among which it was provided that said company would complete seventy-five miles of said road within three years, and thirty-three miles each year thereafter for five years, and the whole line on or before the first day of December, 1868; and

564 Whereas such consent of Congress to the diversion was given by act of July 12, 1862, and the said company afterwards accepted said grant; and

Whereas said Keokuk, Fort Des Moines & Minnesota Railroad Company is now known as and called the Des Moines Valley Railroad Company, and

Whereas said railroad company is in default in respect to the time of construction of said road, and in the performance of other conditions of said grant, whereby the State has the right to reserve the whole or a part of said land; therefore

SEC. 1. *Be it enacted by the general assembly of the State of Iowa*, That the reserved rights and interests of the State in respect to the resu'ption and disposal of said lands are hereby relinquished to and conferred upon said Des Moines Valley Railroad Company, in the manner and upon the performance of the conditions precedent by said company, as hereinafter set forth, and not otherwise, viz:

First. That it shall be the duty of the register of the State land office, as soon as practicable and before the first day of July, 1868, to set apart and reserve from the remaining river lands within the

565 grant, and lying in place next north of township number ninety, and upon which there are no settlers claiming homestead rights, and exclusive also of the ten sections set apart and sold to S. H. Taif, one hundred thousand acres of said lands, which shall be especially held to secure the payment of the claims described in sections 1 & 2 of chapter 22, of the laws of the eleventh general assembly of Iowa, and also of such claims as have been or may be allowed by the present general assembly.

Second. That if the said Des Moines Valley Railroad Company shall fail to pay in full and discharge all the claims in the preceding paragraph mentioned, by or before the first day of July next, then it shall be the duty of the register of the State land-office, and he is hereby required, to proceed immediately to sell, at his office in Des Moines, for cash, to the highest bidder, for not less than one dollar and fifty cents per acre, all the lands reserved by the preceding paragraph, or so much thereof as shall produce the amount of money remaining due and unpaid on such claim: *Provided*, That he shall first advertise the sale of

566 such lands for not less than sixty days, in four different newspapers published, one in Springvale, one in Fort Dodge, one in Des Moines, and one in Keokuk, Iowa: *And provided further*, That such lands shall be sold by him in quantities not less than forty acres, nor more than one hundred and sixty acres each, and that the warrants

issued by the State auditor on account of the claims aforesaid, shall be received as cash in payment of lands bought at such sale: *And provided further*, That said company shall have the right to pay said claims at any time before such sale of lands.

Third. That upon such sale and payment of the purchase-money, the register shall issue a certificate to the purchaser, showing the land purchased by him, and the amount paid therefor; and upon the presentation thereof to the governor, he shall execute to the purchaser a deed, in the name of the State of Iowa, without warranty, conveying the lands so purchased, which deed shall be effectual to pass all the rights and title thereto now held by the State, or which may hereafter be acquired
567 by the State from the United States, and all moneys the proceeds of the sales of lands as aforeseid shall be by the register paid into State treasury for the use of the holders of the unpaid claims herein provided for, which shall be paid in the order specified in section 1 of chapter 22 of the laws of the 11th general assembly upon the production and surrender of the warrants therefor; and if there shall be an amount insufficient to pay the same in full, then the same shall be made *pro rata*, and if there shall remain a balance after paying the same in full, such balance shall be paid over to said railroad company.

Fourth. That the register of State land-office shall, as soon as practicable, and prior to the first day of July next, select from the lands embraced in the said act of Congress, approved July 12, 1862, excluding the lands reserved and described in the first paragraph hereof—one hundred thousand acres of said land—of average value as near as practicable, and embracing the ten sections sold to S. F. Taft, and the lands so selected, as well as the proceeds of any portion thereof now sold,
568 shall be held and applied exclusively for the construction of said railroad above Des Moines, as now provided by law, and shall be conveyed and patented to said railroad company, or to such person or persons as they shall direct, only upon the completion of said railroad to the town of Fort Dodge, on the east side of the Des Moines River, within the year 1870, which said company agree to do, and the evidence of such completion shall be the running of trains into said town within the time specified; and none of said lands shall be patented until such completion, and the proceeds of any portion thereof sold under provision of existing law shall be at the same time paid over to said railroad company. The said railroad company shall also have not less than sixty-five miles of said road from their present terminus graded during the present and ensuing calendar year.

Fifth. That so soon as satisfactory evidence shall be furnished to the governor that all the claims herein provided for have been settled and paid or fully discharged, whether by the sale of the land or by pay-
569 ment made by said railroad company, he shall execute and deliver to the Des Moines Valley Railroad Company, or their assigns, a deed or deeds in the name of the State of Iowa, without warranty, for all the lands embraced in the said act of Congress approved July 12, 1862, save and except the one hundred thousand acres hereinbefore reserved for the construction of said road above the city of Des Moines to Fort Dodge, and except also any lands embraced in said grant which may have been reserved by any act passed prior hereto by the State of Iowa, for the protection or benefit of settlers or persons claiming homesteads thereon, and the settlement made and approved June 20, 1866, by the census board of the State of Iowa with the Des Moines Valley Railroad Company, and the settlement with the United States therein referred to are hereby ratified and confirmed.

SEC. 2. In case of non-complia'ce by said railroad company with the foregoing conditions by it to be performed, then, without further legislation, this act shall have the force and effect of an act of resumption, and all the rights of said company in and to said lands or any part
570 thereof, heretofore or hereby granted to said company, and not at the time of such failure actually conveyed by the State to said company, shall be forfeited to and invested in the State of Iowa as fully as if the grant thereof had never been made by the State.

SEC. 3. This act shall be accepted by the said railroad company, and evidenced by the signature of the president and secretary of said company, with the corporate seal thereof, within thirty day' from the approval of this act, but the non-acceptance by the said Des Moines Valley Railroad Company of this act shall not prevent all the foregoing provisions thereof from having the same operation and effect as if the same had been accepted by said company. The company accepting the provisions of this act shall at all times be subject to such rules and regulations and rates of tariff for transportation of freight and passengers as may from time to time be enacted by the general assembly of the State of Iowa.

SEC. 4. So much of section three of chapter one hundred and eight of the laws of the tenth general assembly, and of other laws and provisions relating thereto, including section five of said chapter, as require the lands hereinbefore referred to, or any part thereof,
571 to be classified or graded by commissioners, and all other acts and parts of acts inconsistent with this act, are hereby repealed.

SEC. 5. This act shall be in force and have effect from and after its publication in the State Register and Evening Statesman papers, published in Des Moines, Iowa.

Approved March 31, 1868.

In circuit court of the United States for district of Iowa.

THE IOWA HOMESTEAD COMPANY, PL'FF,
vs.
THE DES MOINES NAVIGATION & RAILROAD Company and others, def't.

572 Now comes The Des Moines Valley Railroad Company, a corporation created and existing under the laws of Iowa, and a citizen of said State, and makes answer to the bill of the pl'ff.

Defendant denies that plaintiff has acquired any title to any part of the 20,000 acres of land in the odd sections within the railroad grant of May, A. D. 1856, and the Des Moines River grant of A. D. 1846, in Webster and Hamilton counties, and west of the Des Moines River, as alleged in the first paragraph of plaintiff's petition or bill.

Defendant denies that the Territorial and State authorities of Iowa ever acquiesced in the opinion expressed in a letter from Commissioner of the Land Office, at date of Oct., 1856, to the governor of Iowa, that the grant of land under the act of August 8, 1846, to the State of Iowa for the improvement of the Des Moines River, did not extend north of the Raccoon Fork; and defendant alleges that the reason, and only reason, that the selections of land made under said act were at that time limited to the south of the Raccoon Fork was because the land above had not then been surveyed.

Defendant denies that no question arose as to the extent of the
573 grant until nearly two years afterwards, but alleges that the governor and the State authorities of Iowa always contended that

said grant extended to the northern boundary of the State, if not to the source of the river.

Defendant denies that the Supreme Court of the United States, in the suit of E. C. Litchfield against The Dubuque and Pacific Railroad Company, held that the acts of Stuart and McClelland, Secretaries of the Interior, in reserving and setting apart the lands north of the Raccoon Fork were null and void.

Defendant can neither admit nor deny whether or not a plat of the Dubuque and Pacific R. R. was, on or before April 18th, 1857, presented by the governor of Iowa to the Secretary of the Interior, and the alternate sections of land, the line thereof designated and set apart to the State of Iowa under the terms of the act of May, 1857; and if said allegations made by plaintiff are material to this controversy, defendant demands proof thereof.

574 Defendant denies that, after the decision by the Secretary of the Interior, the State of Iowa asked to have the lands reserved above the Raccoon Fork for railroad purposes, instead of under the river grant; and defendant denies that the lands in controversy were reserved by proclamation of the President of the U. S. under the act of May, 1856; but defendant avers, on the contrary, that said lands had already been reserved by competent authority under the Des Moines River grant of August, 1846, and were at date of Oct., 1856, already and then at that time reserved, and were not embraced in the act of 1856, but were expressly by act excepted therefrom.

Defendant cannot admit or deny whether or not said Dubuque and Pacific R. R. Co. performed all the conditions of said act of May, 1856, up to the first day of June, 1861, and, if material, demands proof thereof. Defendant denies that, in the month of August, said R. R. Co. was merged into a new company, called the Dubuque & Sioux City R. R. Co., which succeeded to all the rights and privileges of the Dubuque & Pacific Railroad Company.

575 Defendant can neither admit nor deny that the Dubuque & Pacific R. R. Co., or the Dubuque & Sioux City R. R. Co., had built and equipped the several sections of said road at the several dates alleged by plaintiff, or that the governor of Iowa had made the certificates alleged; and, if material, defendant demands legal proof of said allegations.

Defendant denies that, by the building of any part of said road, said railroad companies, or either of them, acquired any title to any part of the lands in controversy, and claimed by plaintiff in this suit, or became entitled to any part of said lands.

Defendant denies that, after the opinion of Att'y Gen. Black, in 1858, the State of Iowa and the Secretary of the Interior treated the said lands as belonging to the railroad grant, and not to the river grant.

Defendant has not information upon the subject, and cannot admit or deny that the Commissioner of the General Land Office certified, and the Secretary of the Interior approved, any selections made by the Dubuque and Sioux City R. R. Co., or that said R. R. Co. were entitled to the lands now claimed by the plaintiff as purchaser of said R. R. Co., and, if material, demands proof.

576 Defendant denies that said R. R. Co. acquired any title to said lands through a certificate of the governor or by any other means.

Defendant admits the State of Iowa, up to June 9, 1855, had certified and sold 327,000 acres of land under said river-grant, of which 55,000 were located above the Raccoon Fork.

Defendant admits that the State of Iowa, June 4, 1855, made a con-

tract with the Des Moines Navigation & R. R. Co. to convey to it all the remaining lands belonging to the State under the act of 1846, and that the State issued to said company certificates of land, the first dated May 14, 1855, for 88,855.10 acres, and the second for 216,489.64 acres, all located above the Raccoon Fork, except about 50,000 acres, and that said lands, so certified, included the land in controversy in this suit.

Defendant admits that the State of Iowa and the Des Moines Navigation & R. R. Co. made the settlement alleged March 22, 1858, but avers that said Des Moines Nav. & R. R. Co. paid, in cash and property, $120,000 to the State upon such settlement.

577 Defendant admits that the State, on the same day, by legislative act, conveyed its remaining interest in the land to the Keokuk, F't Des Moines & Minnesota R. R. Co., now called the Des Moines Valley R. R. Co.; but

Defendant denies that said conveyance was made subject to any grant made by the State to the railroad companies under the acts of May 15 and July 14, 1856; and

Defendant denies that the State ever made any grant of the land in controversy to any railroad company under the act of Congress of May 15, 1856, and by the act of the State of July 14, 1856.

Defendant denies that Congress, by joint resolution on March 2, 1861, held that the grant of August 8, 1846, did not extend above the Raccoon Fork; but defendant admits that, by said resolution, Congress released to the State of Iowa certain lands above the Raccoon Fork.

Defendant cannot admit or deny that the State and Congress placed the construction upon said act alleged by plaintiff as to what lands it referred to, and, if material, demands proof.

578 Defendant denies that, at the date of this resolution by Congress, the Dubuque and Sioux City R. R. Co. had acquired from the State, with the assent of the Secretary of the Interior, the right to the lands now claimed by the plaintiff.

Defendant admits the passage of act of Congress of July 12, 1862, alleged by plaintiff.

Defendant admits the decision of the case of Lichfield vs. The Dubuque & Pacific R. R. Co., reported in 2d Black's Report, by the Supreme Court of U. S., at Dec. term, 1859; but

Defendant denies that in said cause said court held that the act of the Secretary of the Interior, in setting apart said land, under act of 1846, was void, or implied that the said Dubuque & Pacific Railroad Company was entitled to said land under act of 1856.

Defendant denies that, under act of July, 1862, the State of Iowa, through its officers and the Secretary of the Interior, treated the title of the Dubuque & Sioux City Railroad Co., under the act of 1856, as a good title.

Defendant denies the title of the Des Moines Navigation & Railroad Company to said lands proved invalid, and was so treated by

579 the State of Iowa and said Des Moines Navigation & Railroad Company in the alleged settlement with the State.

Defendant denies that the lands embraced in joint resolution of March 2, 1861, were entirely different lands from those claimed by the Des Moines Navigation and Railroad Company.

Defendant denies that the State of Iowa and the Secretary of the Interior conveyed to the Dubuque & Sioux City Railroad Company any part of said lands in controversy, or that the State became the trustee of said lands, under the act of 1862, for plaintiffs.

Defendant denies that the Des Moines Valley Railroad Company

holds said lands in trust for plaintiffs, and defendant alleges that the Des Moines Valley Railroad Company claims all of the said lands within the five-mile limits, and west of the Des Moines River, and not previously conveyed by the State of Iowa; and defendant denies that said lands had been previously conveyed to plaintiff or its grantees.

Defendant admits that the State of Iowa has recently con-
580 veyed to this defendant, quit-claim all its title to the indemnity lands granted under act of July 12, 1862, and that defendant has executed a deed of trust thereon to Giliman and Cowdry.

Defendant admits the suit brought by Wolcott, in circuit court of United States for New York, against the Des Moines Navigation and Railroad Company; denies the plaintiff and defendant in said suit had the same interest; denies that the same was conclusive; denies that the said suit was not contested; denies that the parties thereto were jointly interested on the same side adverse to plaintiff's claim, and that the object of the parties and attorneys in that suit was to obtain a decision adverse to plaintiff and parties not before the court in that case.

Defendant denies that the settlement and construction of the act of 1862 were not known to the court when they decided that case.

Defendant denies that the title claimed by the Des Moines Navigation and Railroad Company and by the defendant is the inferior title, and one which the State had conveyed away, and failed, and
581 which is referred to in the act of July 12, 1862, and denies that the title of the Des Moines Valley Railroad Company to said lands has failed, or that said railroad company is trustee of said lands for the plaintiff.

Defendant denies that the plaintiff has been in possession of said land since 1862; cannot state and do not know whether plaintiff has paid taxes on any of said lands, and, if material, demands proof.

Defendant denies of interest and title made by plaintiff in and to any of said lands, and denies that plaintiff is entitled to the relief prayed for against this defendant.

The Des Moines Valley Railroad Company, further answering, states that it is the legal owner, and in possession of all of the lands now claimed by the plaintiff as against this defendant.

Defendant states that the said lands in place, within five miles of the Des Moines River, now claimed by the plaintiff as against this defendant, and also the said indemnity-lands, so called, claimed by the
582 plaintiff against this defendant, were legally granted and transferred to this defendant under and by virtue of several acts of Congress, and of the legislature of the State of Iowa, to wit: The act of Congress of August 8, 1846; the joint resolution of Congress of March 3, 1861; and the act of Congress of July 12, 1862, extending the grant of August 8, 1846, of which copies on file with bill and answer in this case, and hereby referred; also by virtue of the joint resolution of the general assembly of the State of Iowa of March 22, 1858, containing propositions for settlement with the Des Moines Navigation and Railroad Company, which were accepted by said company and also by act of the general assembly of the State of Iowa approved March 22, 1858, entitled "An act disposing of the grant of lands made by an act of Congress granting land to the Territory of Iowa to aid in the improvement of the navigation of the Des Moines River;" also the act of the general assembly of said State of March 3, 1860; also the act of the general assembly of said State of March 28, 1864; also the act of the general assembly of the said State of Iowa approved March 31, 1868;

all of which acts, conveying said lands to this defendant, have
583 been accepted by defendant, and copies thereof are filed with the bill and answer herein referred to, and made a part of his answer.

Under said acts said lands have been conveyed by the said State to this defendant, by various patents, and deed of date of , copies of which are *are* filed herewith.

Defendant has complied with and performed the various obligations and conditions imposed by said acts upon the defendant, and, as a consideration for the conveyance of said lands to defendant under said several grants, has paid in cash the sum of about $201,784 09 dollars, as part consideration for said lands, and has executed deeds of trust or mortgage upon all said lands, and issued the bonds of this defendant to the amount of four millions six hundred and ninety thousand dollars, and with the proceeds thereof has proceeded to extend said road from Des Moines, and has altogether built and nearly completed said road from Bentonsport to Fort Dodge, or over two hundred and forty miles, and has expended large sums of money, to wit, about four
584 millions of dollars, in building said road, and said bonds are now in the hands of innocent holders, who purchased the same, relying upon the validity of defendant' title to said lands, under land grant and the action of the Land Department at Washington, and the decision of the Supreme Court of the United States.

Defendant further states that it has paid off and discharged, in cash, all the claims against the Des Moines Navigation & Railroad Company, and against the State of Iowa, mentioned in acts of the general assembly, of March 22, 1858, and in act of March 28, 1864, and has fully complied with and performed the terms and requirements contained in act of March 31, 1868, and has received from the State of Iowa a deed for said lands, including both the lands on the Des Moines River, referred to by plaintiff, and the land selected under act of Congress of 1862, extending said grant, which last named lands, to the amount of acres, has been certified to the State of Iowa, under said act, by the Commis-
585 sioner of the General Land Office, and by the said State conveyed to this defendant in consideration of the building of said road, and the paying of large sums of money to the State of Iowa, to wit, about two hundred & one thousand dollars, and the said lands have been faithfully applied in the building of said road from Bentonsport to Fort Dodge. Defendant files a portion of the report of the register of State land office, containing acts of the general assembly in regard to said lands now sought by plaintiff, and refers to same.

Defendant states the indemnity lands are of little value as compared with the lands in place of the original Des Moines River grant; that the whole of said lands certified under the indemnity act of 1862 were, when selected, of no greater value than the deficiency in said *said* Des Moines River grant, arrising from conveyance made previous to the act extending said grant, and not including the railroad grant of 1856.

Defendant denies that there is any equity in plaintiff's bill, and prays to be hence dismissed.

586 H. STRONG,
Att'y for Des Moines Valley Railroad Co.

I, Carlton H. Perry, being duly sworn, on oath say: I am the vice president and one of the directors of the Des Moines Valley Railroad Company, and am knowing to the facts stated in foregoing answer, and

believe the allegations therein contained are true; that the president of the company is absent from the State.

C. H. PERRY,
Vice-President Des Moines Valley Railroad Company.

STATE OF IOWA, *Lee County:*

Subscribed and sworn to by C. H. Perry, before me, this 27th day of September, A. D. 1869.

[SEAL.] JOHN GIVEN,
Notary Public.

(Endorsed as follows:) Iowa Homestead Company vs. Des Moines Navigation & Railroad Company & Des Moines Valley Railroad Company. Answer filed Oct 19, 1869. George B. Corkhill, clerk.

587 And on this day, to wit, the 10th day of May, 1871, in the May term of said court, comes the defendant, the Des Moines Valley R. R. Co., by Strong and Withrow & Wight, its attorneys, and by leave of court files its amendment to answer, which said amendment is in words and figures following, to wit:

In circuit court U. S., dist. Iowa.

THE IOWA HOMESTEAD CO.
vs.
DES MOINES NAVIGATION & R. R. CO. AND others.

Amendment to answer.

The Des Moines Valley R. R. Co. amends answer, and alleges that the United States, by act of Congress, entitled "An act confirming title to certain lands," approved March 3rd, 1871, ratified and confirmed the grant and conveyance by the State of Iowa, to said R. R. Co., of the said lands known as "indemnity lands," which had been set apart by the Sec't'y of the Interior to the State of Iowa, under act of Congress of July 12, 1862, & def't files copy marked Exhibit K. of said act of M'ch 3, 1871, makes same part of its answer.

H. STRONG & WITHROW & WIGHT,
For D. V. R. R. Co.

(Endorsed:) Filed May 10, 1871. George B. Corkhill, clerk.

588 EXHIBIT K.

An act confirming the title to certain lands.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the title to the land certified to the State of Iowa, by the Commissioner of the General Land-Office of the United States, under an act of Congress entitled "An act confirming a land claim in the State of Iowa, and for other purposes," approved July 12th, 1862, in accordance with the adjustment made by the authorized agent of the State of Iowa, and the Commissioner of the General Land-Office, on the twenty-first day of May, anno Domini eighteen hundred & sixty-six, and approved by the Secretary of the Interior on the twenty-second day of May, anno Domini eighteen hundred & sixty-six, and which adjustment was ratified and confirmed by

the act of the general assembly of the State of Iowa, approved March 31, eighteen hundred and sixty-eight, be, and the same is hereby, ratified and confirmed to the State of Iowa: *Provided*, That nothing in this act shall be so construed as to affect adversely any existing rights, or the rights of any party claiming title, or the right to acquire title to any part of said lands under the provisions of the so-called homestead or pre-emption laws of the United States, or claiming any part thereof as swamp lands.

Approved March 3, 1870.

(Indorsed:) Act of Congress approved , 1871, confirming the Harvey settlement, &c.

589 And on this day, to wit, the 22nd day of November, A. D. 1869, comes one of the defendants in said cause, William B. Welles, by J. M. Ellwood, his solicitor, and files in said cause his answer to the bill of complaint, which said answer is in words and figures following, to wit:

United States circuit court, district of Iowa.

THE IOWA HOMESTEAD COMPANY, complainant,
vs.
THE DE' MOINE' NAVIGATION AND RAILROAD Company, Samuel G. Wolcott, W'm B. Wells, Roswell S. Burrows, Edwin C. Litchfield, W'm J. McAlpine, Richard B. Chapman, Albert H. Tracy, Francis W. Tracy, Harriet Tracy, Electus B. Litchfield, Edward John Stryker, & others, defendants. } In equity.

The several answer' of the defendant, W'm B. Wells, to the bill of complaint of the Iowa Homestead Company, complainant.

590 This defendant, W'm B. Wells, now and at all times hereafter saving and reserving to himself all manner of benefit and advantage of exception to the many errors and insufficiencies in the complainant's said bill of complaint contained, for answer thereto, or unto so much or such parts thereof as this defendant is advised is material for him to make answer unto, answers and says: That he is informed by complainant's said bill of complaint, and believes to be true, that the said Iowa Homestead Company is a corporation created by the laws, and a citizen of, the State of Iowa, for the purpose of bu'ing and selling lands in said State, but as to whether or not said corporation was duly created and organized by a full and complete observance of the requirements of the statutes of said State authorizing and providing for the organization and formation of corporations, this defendant has not sufficient knowledge or information to form a belief.

And this defendant says that, as to whether or not said complainant, by deed of purchase beginning November 12, 1863, acquired, by and through the Dubuque and Sioux City Railroad Company, all the
591 rights of the said company, and the Dubuque and Pacific Railroad Company to about fifty thousand acres of land lying on the east side of the Des Moines River, in Webster and Humbol't Counties,

Iowa, being the odd sections of land within the limits of the Dubuque and Pacific Railroad grant of 1856, and of the Des Moines River grant of 1846, as in complainant's bill alleged, the defendant is ignorant and uninformed, save be complainant's bill of complaint, and leaves complainant to proof thereof; but he expressly denies that by such deed or deeds of purchase, or otherwise, the said complainant ever acquired the right and title of the State of Iowa to the said fifty thousand acres, as in complainant's bill claimed.

And this defendant, further answering, admits that the said De' Moine' Navigation and Railroad Company is a corporation created by the laws of the State of Iowa, and the said company and its grantees claim the said fifty thousand acres of land in the said bill of complaint, and the lists therein referred to and thereto annexed and described, or so much and such parts and portions thereof as were certified and approved to the State of Iowa under the act of August 8, 1846, and conveyed to the said De' Moines Navigation and Railroad Company
592 by the State of Iowa, and subsequently confirmed *to* the joint resolution of March 2, 1861, and the act of Congress of July 12, 1862, as hereinafter stated and set forth; and this defendant alleges and avers that the said De' Moine' Navigation and Railroad Company and its grantees claim all the lands lying in the alternate odd-numbered sections within five miles of the Des Moines River, and on the east side thereof, and in the said counties of Webster, and Hamilton, and Humbol't, as far north as the north line of township 92, and on the west side thereof as far north as the second correction line. and have full and complete title thereto, as hereinafter stated and set forth.

And this defendant admits the passage by Congress of the said act of August 8, 1846; that, on the 24 of Feb'ry, 1847, the State of Iowa appointed a board of public works to improve the navigation of the said (Des Moines) River, and that, on the 23d day of February, 1848, R. M. Young, Commissioner of the General Land-Office, addressed to the secretary of the said board of public works a letter containing the language quoted in complainant's bill stated and set out.

And this defendant admits that, on or about the 17th of October, 1846, the governor of the State of Iowa was notified by James
593 H. Piper, Acting Commissioner of the General Land-Office, by letter, that, "under the grant of August 8, 1846, the Territory of Iowa was entitled to the vacant lands in the alternate sections within five miles on each side of the Des Moines River from the northern boundary of Missouri to the Raccoon Fork of the Des Moines River," but, upon information and belief, he denies that the territorial and State authorities acquiesced in the opinion expressed in said letter so far as it implies that the grant extended only to the Raccoon Fork.

And this defendant admits that, on the 19th of June, 1848, the President, by proclamation, ordered into market some of the lands in the odd-numbered sections above the Raccoon Fork; that the board of public works in Iowa protested against this; that, on the 8th of January, 1849, the delegation in Congress from Iowa called the attention of the Secretary of the Treasury to the construction of the act of August 8, 1846, claiming that the odd sections above the Raccoon Fork, which had been ordered into market by the President, belonged to the State of Iowa under the said grant of August 8, 1846, and that R. J. Walker, Secretary of the Treasury, on the 2d day of March, 1849, held and decided that the said grant of August 8, 1846, extended to the source of the Des Moines River.

594 And this defendant admits and alleges that, on the 2d of

March, 1849. R. J. Walker, Secretary of the Treasury, communicated to R. M. Young, Commissioner of the General Land-Office, his said decision in respect to the extent of said grant, and instructed him to be governed thereby, and that on the 16th of June, 1849, the said Commissioner withdrew the said lands in the said odd-numbered sections above the Raccoon Fork from sale, pursuant and in obedience to the said construction of Secretary Walker, and on the same day the said Commissioner advised the land officers in the State of Iowa having in charge the sale of public lands above the Raccoon Fork, in the State of Iowa, of the decision of the Secretary of the Treasury, and directed and instructed them accordingly to withdraw from market and withhold from sale the lands in the odd-numbered sections above the Raccoon Fork and within five miles of the Des Moines River.

And this defendant, further answering, admits that, on or about the 14th of January, 1850, the Commissioner of the General Land-Office informed Ewing, Secretary of the Interior, that the lands charged against the State of Iowa amounted to 825,078 acres, and when the grant was adjusted the amount between the Raccoon Fork and the source
595 of the river was estimated to contain 900,000 acres.

And this defendant, further answering, says that, as to whether or not the Commissioner of the General Land Office on the 13th of March, 1850, submitted to Secretary Ewing three lists of lands showing the tract falling within the limits of the grant above the Raccoon Fork, as in complainant's bill alleged, he is ignorant and *informed*, save by the said complainant's bill of complaint; he admits, upon information and belief, that, on the 6th of April, 1850, Secretary Ewing addressed to the Commissioner of the General Land-Office the letter, of which a copy, in substance, is set out among the exhibits annexed to complainant's printed bill, at pages 64 & 65 thereof, but he denies that said Ewing, by said letter or otherwise, revoked the decision of Secretary Walker, and denies that he had any authority to review or reverse the decision of Secretary Walker, which had been acted on and carried out, and that his said letter, or any act or order of his whatever could affect or reverse the said decision of Secretary Walker.

And this defendant, further answering, admits that, on the 19th of July, 1850, Reverdy Johnson, Attorney General, upon sub-
596 mission of the question to him by the President, gave and rendered his opinion, that the grant of August 8, 1846, extended above the Raccoon Fork to the source of the river; that on the 30 of June, 1851, Crittenden, Attorney General, expressed the opinion that the grant did not extend above the Raccoon Fork; that on the 29th of October, 1851, Stuart, Secretary of the Interior, addressed to the Commissioner of the General Land-Office the letter, of which a copy is set out among the exhibits annexed to complainant's printed bill on file, on pages 65 & 66, in which he directed said Commissioner to select and report for his approval a list of the alternate sections of land claimed by the State of Iowa above the Raccoon Fork, under the said grant of August 8, 1846, and this defendant alleges and avers that said Secretary Stuart, by his order and direction in said letter contained, expressly and distinctly recognizes the acts of Secretary Walker in the premises as valid and binding upon the United States, and directly recognizes the validity of the claim of the State of Iowa under the said grant of August 8, 1846, to lands lying in the alternate odd-num-
597 bered sections above the Raccoon Fork and within five miles of the Des Moines River, including those claimed by the complain-

ant in this action as against the said De' Moine' Navigation and Railroad Company and its grantees.

And this defendant, further answering, admits that the Supreme Court of the United States, at the December term, 1857, and on or about the 9th day of April, 1860, in the case of Litchfield vs. The Dubuque and Pacific Railroad Company, held and decided that the grant contemplated by the act of August 8, 1846, did not extend above the Raccoon Fork.

And this defendant, further answering, admits and alleges that, on the 30th of October, 1851, the Commissioner of the General Land-Office and the Secretary of the Interior certified and approved to the State of Iowa, under the said grant of August 8, 1846, of the lands lying in the alternate odd-numbered sections above the Raccoon Fork, 214,391.58 acres, and on the 10th of March 1852, the further quantity of 143,908.37 acres; and on the 17th of December, 1853, the further quantity of 33,142.43 acres; and on the 30th of December, 1853, the further quantity of 12,813.51 acres.

And this defendant, further answering, says, that he is ignorant
598 and uninformed, save by the said complainant's said bill of complaint, as to whether or not the Commissioner of the General Land-Office on the 21st of March, 1856, decided that the grant of August 8, 1846, did not extend above the Raccoon Fork. Upon information and belief he admits that Attorney General Black, in his letter of November 22, 1858, expressed the opinion that the grant of August 8, 1846, did not extend above the Raccoon Fork; but upon information and belief he denies that the Secretary of the Interior on the 7th of May, 1858, rejected the claim of the State of Iowa to the lands above the Raccoon Fork which had been certified to the State as aforesaid.

And this defendant further answering, admits that the Congress of the United States, on or about the 15th of May, 1856, passed and enacted the act entitled, "An act making a grant of lands to the State of Iowa, in alternate sections, to aid in the construction of certain railroads in said State," and that a copy thereof is set out as an exhibit to complainant's bill in the printed copy thereof on file, at pages 127, 128, & 129 thereof, and also admits that, on or about the 14th of July, 1856,

the general assembly of the State of Iowa passed the act entitled
599 "An act to accept the grant and carry into execution the trust conferred upon the State of Iowa by an act of Congress entitled 'An act making a grant of lands to the State Iowa, in alternate section' to aid in the construction of certain railroads in said State,'" approved May 15, 1856, and that a copy of the said act of the general assembly is substantially set out in complainant's printed bill at pages 129, 130, 131, 132, 133, & 134 thereof, but this defendant expressly denies that, under and by the said act of Congress and the said act of the general assembly, or either of said acts, either the State of Iowa or the Dubuque and Pacific Railroad Company, or the plaintiff obtained or acquired any title or interest in the lands claimed by the plaintiff in this action which had been previously certified and approved to the State of Iowa by the Commissioner of the General Land-Office or the Secretary of the Interior, under the said act of Congress of August 8, 1846; and this defendant expressly alleges and avers that all the lands in complainant's bill of complaint designated, specified, and claimed by plaintiff, which had, previous to the passage of said act of Congress of May 15, 1856, been certified to the State of Iowa under the said grant of August

8, 1864, as hereinafter stated, (being the lands lying in the
600 alternate odd-numbered sections within five miles of the Des

Moines River,) had been, and at the time of the passage of the said act of May 15, 1856, were expressly reserved to and by the United States, by competent authority, and by the last proviso in section one of said act were expressly reserved from the operations and effect of the said act, and the same being so reserved never passed to the State of Iowa under the said act of May 15, 1856, and by the said act the State of Iowa acquired no title to the said land for the purpose of act or otherwise, and the State of Iowa was not authorized by the said act of May 15, 1856, to dispose and certify, or to convey or authorize to be conveyed, to the said Dubuque and Pacific Railroad Company, or to any corporation or person whatsoever, the said lands in the said alternate odd-numbered sections, embraced in the limits of the lands certified and approved to the State of Iowa under the said grant of August 8, 1846, or any part or parcel or portion thereof.

And this defendant, further answering, says that as to whether or not a plat of the Dubuque and Pacific Railroad Company was, on the 18 of April, 1857, presented by the governor of Iowa to the Secretary of the Interior and the alternate sections on the line thereof
601 designated and set apart by him to the State of Iowa, under the grant of May 15, 1856, this defendant is ignorant and uninformed, save by said complainant's bill of complaint, but, upon information and belief, he denies that the State of Iowa asked, and the Secretary of the Interior reserved, the lands (so far as the same had been certified to the State of Iowa under the grant of August 8, 1846) within five miles of the Des Moines River above the Raccoon Fork for the railroad instead of the river grant.

And this defendant, further answering, upon information and belief, alleges and avers that the said Dubuque and Pacific Railroad Company, and the Dubuque and Sioux City Railroad Company, nor either of said companies, ever complied with and performed the conditions and requirements of the said act of the general assembly of July 14, 1856, to entitle them to the lands in controversy in this suit thereunder, but utterly failed to complete and construct their road, as and in the manner and at the time and times in said act specified; and this defendant expressly denies that, by anything in the said act of Congress
602 of May 15, 1856, and the act of the general assembly of the State of July 14, 1856, contained, or by anything done by said Dubuque and Pacific Railroad Company, or the said Dubuque and Sioux City Railroad Company, or the governor of Iowa, or the Secretary of the Interior, as in complainant's bill alleged, the State of Iowa, or the said Railroad Company ever acquired any title to or interest in the lands lying in the alternate odd-numbered sections within five miles of the Des Moines River, and certified to the State of Iowa by the Secretary of the Interior, under the said grant of August 8, 1846, as hereinafter stated and set forth.

And this defendant denies that, after the opinion of Attorney General Black in 1858, the State of Iowa and the Secretary of the Interior treated the said lands certified to the State under act of August 8, 1846, as belonging to the railway, and not to the river grant, and upon information and belief, he denies that an application of the De' Moine' Navigation Company for a title as assignee of the State was refused by the Secretary of the Interior as in complainant's bill alleged, and this defendant, further answering, says that he is informed and believes to be true, and therefore alleges and avers that the said De' Moine'
603 Navigation and Railroad Company uniformly, after the said lands were certified to the State under the said act of August 8,

1846, and sold and conveyed to the said company by said contract of June 9, 1854, and by the deeds to said company as hereinafter stated, claimed and insisted that they had and held full, absolute, and complete title to said lands; that with the sole view of procuring evidence to said company directly of the title to said lands, said company, by Reverdy Johnson, their attorney, about the year 1856, applied to the Secretary of the Interior to issue patents for said lands directly to said company, but said Secretary declined and refused to issue such patents, for the reason that the United States had no title thereto, having by the certificates of said lands to the State under the act of August 8, 1846, parted with its title to the said lands.

And this defendant denies that, on the 11 of April, 1863, the Commissioner of the General Land Office certified that the Dubuque and Sioux City Railroad Company were entitled to the lands now claimed by plaintiff as purchasers of the Dubuque and Sioux City Rail-
604 road Company; and denies that the said Dubuque and Sioux City Railroad Company acquired title to said lands, when the certificate was given by the governor in 1861, as in complainant's bill alleged, and the defendant, upon information and belief, alleges that the certificate given by the Commissioner of the General Land Office was given on or about February 26, 1863, a copy of which, in substance, is set out in complainant's bill as an exhibit at pages 24 & 25.

And this defendant, further answering, says that, as to whether or not the Dubuque and Pacific Railroad Company in August, 1861, (or at any other time,) was merged in a new company called the Dubuque and Sioux City Railroad Company, and which succeeded to all the rights and obligations of the Dubuque and Pacific Railroad Company, this defendant is ignorant and uninformed, save by the said complainant's said bill of complaint, but he expressly denies that the completion of the said first five sections of twenty miles each, the Dubuque and Sioux City Railroad Company on the 25th of April, 1861, or at any
605 other time, became, or that the said company or its grantees now is, entitled to the lands on both sides of the Des Moines River, now claimed by complainant in this action, and that this defendant is ignorant and uninformed, save by complainant's said bill, as to whether or not the governor of Iowa on 25 of April, 1861, certified that said Dubuque and Sioux City Railroad Company had completed the 5th continuous twenty miles of road west from Dubuque, and as to whether or not said governor on the 29th day of July, 1865, certified that said company on the 2d of June, 1864, had completed the sixth section of twenty miles of said road west from Dubuque, as in complainant's bill alleged.

And this defendant, further answering, admits that on or about the 9 day of June, 1854, the State of Iowa made and entered into a contract with the Des Moine' Navigation and Railroad Company for the improvement of the Des Moines River and to convey to said company all the unsold lands above the Raccoon Fork, which had been certified to the State under the said act of August 8, 1846; that said company
606 undertook and entered upon said work, and as the improvement progressed, the State, by its proper officers, issued to said company certificates of sale of about 205,489.64 acres of the said lands, including those claimed by the plaintiff, east of the Des Moines River; and this defendant expressly denies that the Commissioner of the General Land Office and the Secretary of the Interior refused certify or convey the said lands to the State, or the De' Moine' Navigation and Railroad Company, and alleges and avers that all said lands were duly cer-

tified and approved to the State under the act of August 8, 1846, by said Commissioner and Secretary, prior to the date of said contract with the State, June 9, 1854.

And this defendant, further answering, denies that the State of Iowa and the said De' Moine' Navigation and Railroad Company, in the settlement made under and in pursuance of the joint resolutions of March 22, 1858, settled difficulties arising out of the construction of the grant of August 8, 1864, and he alleges and avers that the State then claimed to own and have the title to all the unsold lands which had been certified to it under the grant of August 8, 1846, and the settlement
607 by and between the State and said company in pursuance of which the State conveyed the said lands to said company was simply a settlement of the claims made by said company for monies expended and work done, and materials furnished by said company, under its said contract, and the other claims referred to in said joint resolutions herein stated and alleged.

And this defendant further answering, admits the passage by Congress of the joint resolution of March 2, 1861, but he denies that the said resolution was construed by the State of Iowa, and by Congress, through their executive officers, or otherwise, to refer only to lands above the Raccoon Fork, conveyed to settlers and other individuals, and not to include the lands claimed by plaintiff in this action, and he expressly denies that at the date of said resolution the Dubuque and Sioux City Railroad Company had acquired from the State the title to the lands now claimed by the plaintiff in controversy, as against the De' Moines Navigation and Railroad Company and its grantees, or any part of portion thereof.

And this defendant, further answering, admits that at the date
608 of said act of July 12, 1862, in said complainant's bill mentioned, the Supreme Court, in the case of Litchfield vs. The Dubuque and Pacific Railroad Company, had decided that the grant of August 8, 1846, did not extend above the Raccoon Fork, but he denies that such court, by implication or directly, in said cause held or decided that the said Dubuque and Pacific Railroad Company was entitled to the lands in dispute herein, under the act of 1856 or otherwise; but on the contrary he affirms and alleges that the said Supreme Court, in the case of Wolcott vs. The De' Moine' Navigation and Railroad Company, expressly held and decided that the said railroad company acquired no title to or interest in the said lands whatever, under the said act of May 15, 1856, and that the same by the terms of the proviso, and exception in said act contained, were expressly reserved from the operation of said act from the grant therein contained.

And this defendant, further answering, admits that the State of Iowa appointed Josiah A. Harvey, register of the State land office, a commissioner to adjust the claims of the State, under the grant made to
609 the State, and that the act appointing said Harvey such commissioner was passed and approved March 30, 1866; that said Harvey, as such commissioner, as this defendant is informed and believes to be true, assumed on behalf of the State to make adjustments of the several grants to the State, but whether such adjustment is truly and correctly set out in complainant's bill, this defendant has no knowledge or information, save that implied by the allegations in the said complainant's said bill of complaint, but this defendant expressly alleges and avers that such assumed and pretended adjustment was not made until long after the title to the lands in dispute had, by the joint resolution of March 2, 1861, and the act of July 12, 1862, (heretofore referred

to,) been confirmed to the State and its grantees, and not until the month of June, 1866, and he expressly alleges that at the time of such assumed or pretended adjustment, the title to the lands in dispute had wholly and absolutely passed from the State of Iowa, and then vested in the De' Moine' Navigation and Railroad Company and its grantees; that the deeds or patents executed by the State to the said company, and by said company to its several grantees, as herein stated,
610 covering the lands in dispute, as against this defendant, were then, and since have been, and still are operative and binding and in full force, having never been judicially set aside, and were and are conclusive as against the State, and that neither the State of Iowa nor its agent, the said Harvey, nor the census board of said State, nor the Commissioner of the General Land Office and Secretary of the Interior, had any power, authority, or control over said lands in dispute, and that any adjustment made by them, or any of them, in respect to the said lands, did and could in no way operate to impair or affect or disturb the title of the said De' Moine' Navigation and Railroad Company and its grantees to the said lands, but that such adjustment, so far as said company and its grantees are concerned, was and is of no binding force or obligation whatever, but was wholly and entirely nugatory and void.

And the defendant, further answering, expressly denies that the lands referred to and covered by the resolution of March 2, 1861, were different lands from those claimed by the De' Moine' Navigation Railroad Company, and he avers and alleges that the lands in dispute herein,
611 so far as conveyed to said company, are part and parcel of the lands in said joint resolution referred to as having "been certified to the State improperly by the Department of the Interior as part of the grant by act of Congress, approved August 8, 1846," and held by bona-fide purchasers under the State of Iowa, and that the confirmation of the same to the State of Iowa by the joint resolution vested the title therein in the grantees of the State, the said De' Moine' Navigation and Railroad Company and its grantees, absolutely and beyond all control of the State or the United States.

And in support of the proposition that the lands included in and covered by the joint resolution of March 2, 1861, were the same lands now claimed by the De' Moine' Navigation and Railroad Company and its grantees, including those in dispute in this action, this defendant alleges and avers that the Commissioner of the General Land Office, on the 26th day of June, 1862, for the purpose of enabling the Land Department at Washington to determine what part and portions of the said lands which had been "certified to the State" had, by the State, been conveyed to bona purchasers under the State, addressed to the governor of Iowa an official letter requesting the governor "to
612 furnish his office with a list of the tracts referred to in said resolution and held by bona-fide purchasers under the State of Iowa on the 2d of March, 1861, and to certify the under his official seal, specifying in each case the date of sale, name of purchaser, consideration, and the date of the patent or deed or conveyance by the State;" and that copy of said letter is set out among the exhibits to complainant's bill, on page 105 of the printed bill of complaint, and to which letter this defendant prays leave to refer; that afterwards, in compliance with the request of said Commissioner, the governor of Iowa did furnish to said Commissioner the lists called for by the letter of the said Commissioner, duly certified, which said lists so furnished and certified by the governor, are now on file in the office of the Commissioner of the

General Land Office, and to which, for greater certainty, this defendant prays leave to refer, and that said lists covered and embraced and included all the lands now claimed by plaintiff in this action, as against the said De' Moine' Navigation and Railroad Company and its grantees.

And this defendant, further answering, admits that, after the passage of the act of July 12, 1862, Samuel G. Wolcott, a citizen of
613 New York, claiming the east half of section 17, township 88, (instead of 87, as in complainant's bill alleged,) range 27 west, in the said county of Webster, under purchase from the said De' Moine' Navigation and Railroad Company, brought suit in the circuit court of the United States for the southern district of New York against said company for a breach of warranty of title, and that in said action the title of the said De' Moine' Navigation and Railroad Company was, by the Supreme Court of the United States, held good and valid; and this defendant, upon information and belief, denies that the said suit was designed and intended by the parties thereto as an agreed case to settle the construction on an act of Congress, in which bill the plaintiff and defendant had the same interest, adversely to the claim of the plaintiff in this suit, and also, upon such information and belief, denies that both parties jointly paid the costs, and that the attorneys employed were both really interested on the same side, and that the object was to obtain an adjudication of the rights of the plaintiff and others who were like situated, and who were not before the court; and he expressly alleges and avers that said suit was commenced in good
614 faith, and for the purpose indicated by the pleadings therein, and was conducted without collusion and without any fraud upon the rights of the plaintiff or others interested, or claiming to be interested therein.

And this defendant, further answering, alleges and avers that, after the commencement of the said suit by said Wolcott against the said De' Moine' Navigation and Railroad Company, and before the same was determined, and while the same was pending, the said Dubuque and Sioux City Railroad Company, under which the plaintiff herein claims title, applied to the court to intervene as a party interested in the controversy therein; that such application was granted, and the said Railroad Company made a party defendant; that the said Railroad Company, the grantors of the plaintiff herein, as this defendant is informed and believes to be true, and therefore alleges and avers, made such application to be made party defendant, and was so made such party with the full knowledge and consent and at the desire and instance and request of the said Iowa Homestead Company—the complainant in this action—for the purpose of protecting the interest of said Homestead Com-
615 pany, as well as those of the said railroad company, in the premises; that, on application, time was given to said railroad company to prepare for the trial thereof; that the said railroad company as such party was fully heard and represented, and its claims to said lands and the title thereto litigated by said company, and passed upon and decided by said Supreme Court adversely to the claims of said railroad company; that in such action the said railroad company relied upon and argued the same title, or claim to title, as is now urged and relied upon by the plaintiff herein; that the decision of the said court in said action is conclusive and decisive, and res adjudicata, so far as the claims of plaintiff in this action is concerned, and this defendant avers and insists that the said action, and the decision of the said court therein, is a full and perfect and a complete bar to the maintenance of this action by the plaintiff and decision of the plaintiff's claim herein.

And this defendant, further answering, admits that, after the settlement of the State with the De' Moine' Navigation and Railroad Company, 1858, the said De' Moine' Navigation and Railroad Com-
616 pany conveyed certain parcels of the land claimed by plaintiff to Samuel G. Wolcott, W'm B. Wells, Roswell S. Burrows, Edwin C. Litchfield, W'm J. McAlpine, Richard B. Chapman, Electus B. Litchfield, Edward Wade, and John Stryker, but he denies that said company conveyed any portion of said lands to the defendants, Albert H. Tracy, Francis W. Tracy, and Harriet Tracy, and upon information and belief alleges that the said defendants, Albert H. Tracy, Francis W. Tracy, and Harriet Tracy, hold and acquired their title to the lands claimed by them under and through Albert H. Tracy, the father of the defendants, Albert H. and Francis W., and the husband of the said Harriet Tracy, who was a grantee of said company; and this defendant alleges and avers that he, as well as the other grantees of the said De' Moine' Navigation and Railroad Company, was and is a bona fide purchaser of the tracts respectively conveyed to them by the said De' Moine' Navigation and Railroad Company under the State of Iowa, and he expressly denies the allegation in the complainant's said bill of complaint, averring that he or either of the other defendants are not bona fide purchasers of the tracts claimed by them respectfully.

617 And this defendant, further answering, denies that the defendants, who are purchasers from the De' Moine' Navigation and Railroad Company, received or hold the title to the lands respectively claimed by them for their share or shares of stock in said corporation as in complainant's bill alleged, and denies that he is, or that any of such defendants are, purchasers, with notice of complainant's alleged equities; and he expressly alleges and avers that the said De' Moine' Navigation and Railroad Company was, and is, a bona-fide purchaser of all the lands conveyed to it by the State of Iowa, as herein stated, including those in dispute in this action, for a good and valuable consideration, without notice; that said consideration is found and appears in the said contract between the State of Iowa and the said company, under date of June 9, 1854, herein, and in complainant's bill referred to, and the work and labor performed, and expenditures incurred by said company thereunder, and the further consideration set forth and appearing in the said joint resolution of March 22, 1858, and the settlement thereunder; that the said act of May 15, 1856, which complainant claims to be the source and foundation of his title, was not passed until
618 nearly two years after the date of said contract between the State and said company; that prior to and the time of the passage of the joint resolution of March 22, 1858, and the settlement thereunder, and the execution of deeds or patents of the said lands by the State to said company, as herein stated, neither the agents and officials of the United States, or of the State, nor the Dubuque and Pacific Railroad Company, nor the Dubuque and Sioux City Railroad Company, nor their grantees, had ever made or asserted any title whatever to any of the lands so sold and conveyed to the De' Moine' Navigation and Railroad Company, as herein stated, but the same were then held and claimed by the State under the said grant of August 8, 1846, and not otherwise.

And this defendant, further answering, says that as to the allegations in said complainant's bill of complaint touching and relating to the claim and title of The Des Moines Valley Railroad Company to parts and portions of the lands claimed by said company, and by the plaintiff in this action, (except so far as the same are conferred by the joint res-

olution of the general assembly of the State of Iowa, of March 22, 1858, and set forth as an exhibit to complainant's bill,) this defendant
619 is ignorant and uninformed, save by the said complainant's said bill of complaint, and, as to those allegations, he leaves complainant to make such proof as he shall be advised is material and necessary; and this defendant disclaims all title to, or interest in, such parts and portions of said lands.

And this defendant, further answering, says that he admits that the copies of instruments annexed as exhibits to the complainant's bill of complaint, so far as the same are pertinent and bear upon the controversy between the plaintiff and the De' Moine' Navigation and Railroad Company and its grantees herein, are substantially copies of the originals of which they respectively purport to be copies.

And this defendant, further answering, denies that the title of the complainant to the lands claimed by these defendants, and by the De' Moine' Navigation and Railroad Company and its grantees, is superior and paramount to that of the said company and its grantees; and he expressly denies that the plaintiff, by reason of the matters in said complainant's bill of complaint contained as against the said De' Moine' Navigation and Railroad Company and its grantees, has any title
620 whatever to the said lands claimed by said company and its several grantees respectively.

And this defendant, further answering, says that, as to whether or not the said complainant and its vendees have been in possession of and paid taxes on the lands claimed by them since 1861, to the amount of $80,000, this defendant is ignorant and uninformed save by the said complainant's bill of complaint; but he expressly avers that the possession of the said lands by the said complainant and its vendees since 1861, is, and has been, unauthorized and wrongful, and that the said complainant should be required to account for the use and rents and profits thereof to the proper owners respectively during the time they have been in such possession; and he also expressly alleges and avers that all taxes whatsoever, paid by said complainant, have been paid by complainant voluntarily, with a knowledge of all the facts, and that the complainant is not entitled to have the same or any part thereof refunded.

And this defendant, further answering, denies the defendants in this action have commenced actions at law in this court against persons claiming title through plaintiff, or otherwise, to eject them from
621 lands owned by the plaintiff; but he admits and avers that the said defendants have commenced actions in the district court of the counties of Webster and Hamilton, in their respective names, both at law and in equity, against persons in possession and persons claiming title to recover possession, or to quit titles to the tracts of the said lands claimed by said defendants in said counties of Webster and Hamilton.

And this defendant, further answering, alleges and avers that on the 8th day of August, 1846, the Congress of the United States passed an act entitled "An act granting certain lands to the Territory of Iowa to aid in the improvement of the navigation of the Des Moines River, in said Territory;" that by the first section thereof there was granted to the said Territory the one equal moiety in alternate sections of the public lands, (remaining unsold and not otherwise disposed of, encumbered, or appropriated,) in a strip five miles in width on each side of said river, to be selected within said Territory by an agent or agents to be appointed by the governor thereof, subject to the approval of the Secretary of the Treasury of the United States; that by the fourth section

of said act it was enacted and provided "that whenever the Ter-
622 ritory of Iowa shall be admitted into the Union as a State, the land hereby granted for the above purpose shall be and become the property of said State for the purpose contemplated in this act, and no other, provided the legislature of the State of Iowa shall accept the said grant for the said purpose," (and to which said act for greater certainty this defendant refers;) that subsequently, to wit, in December, 1846, the said Territory of Iowa was admitted into the Union as a State, and that after its admission as such, the State of Iowa, by a joint resolution of the general assembly thereof, passed and approved January 9, 1847, accepted the said grant for the purposes in said act mentioned and specified.

And this defendant further shows that, pursuant to and in accordance with the provisions of the said act of August 8, 1846, the governor of Iowa appointed agents, who selected under the said act the lands situated and lying in the alternate odd-numbered sections within the limits of the said grant, for and in behalf of the State, and that such selections, when made, were duly reported to the Commissioner of the General Land Office, and were duly approved by him and by the Secretary
623 of the Treasury of the United States; that such selections and approval were made in the year 1846, and after such approval, and on the 17th day of October, 1846, the Commissioner of the General Land Office instructed the register and receiver in Iowa, having charge and control over lands, to reserve from sale or entry of any kind all the unsold and unappropriated lands in the sections selected by the State of Iowa as aforesaid. That on the 23d day of February, 1848, the Commissioners of the General Land Office held and decided that, under the said grant in said act of August 8, 1846, contained, the State of Iowa was entitled to the alternate sections within five miles of the Des Moines River, throughout the whole extent of that river within the limits of Iowa, and that such decision is found and contained in the letter of Richard M. Young, commissioner, a copy whereof is set out in the printed bill of complaint, at page 56 & 57 thereof, and to which this defendant for greater certainty prays leave to refer.

And this defendant, further answering, alleges and avers that, on the 2d day March, 1849, the Secretary of the Treasury of the United States held and decided that the said grant in the said act of August
624 8, 1846, contained, and thereby contemplated, "extended on both sides of the said river, from its source to its mouth, but not to lands on said river, in the State of Missouri," as will appear more fully by the letter of R. J. Walker, Secretary of the Treasury, to A. C. Dodge and others, a copy of which is set out in the printed bill of complaint on page 61 thereof, and to which this defendant for greater certainty prays leave to refer; that in pursuance and in accordance with the said decision of the Secretary of the Treasury, the said Commissioner of the General Land Office, on the 1 day of June, A. D. 1849, directed and instructed the said register and receiver of the public lands at Iowa City, in the State of Iowa, to withhold from sale all lands situated in the odd-numbered sections within five miles of that (Des Moines) River, above the Raccoon Fork, as will more fully appear by the lette's of R. J. Walker to R. M. Young, commissioner, and R. M. Young, commissioner, to register and receiver at Iowa City, copies of which are set out in the printed bill of complaint, on page 62 thereof, and to which for greater certainty this defendant prays leave to refer; that such direction and order of the Commissioner of the General Land Office was re-
625 ceived by the register and receiver of the United States Land

Office at Iowa City, on the 16 day of June, 1849, and the said order was adopted and approved by the Secretary of the Treasury of the United States, the other officers of the United States, including the heads of departments having the charge and control of the public lands, and the same was continued, carried out, enforced, and acted upon by all succeeding Commissioners of the General Land Office, and by all succeeding Secretaries of the Treasury and of the Interior having charge and control of the public lands, until the said lands lying in such alternate odd-numbered sections were duly certified and approved to the State of Iowa, under and for the purpose of said grant of August 8, 1846, as more fully hereafter stated, as will more fully appear by reference the *the* original letters, orders, and decisions of said Commissioners and Secretaries referred to, and to which for greater certainty this defendant prays leave to refer.

And this defendant, further answering, alleges and avers that all of the said lands which had been surveyed, lying in the said alternate odd-numbered sections above the Raccoon Fork, were, by the Commissioner of the General Land Office, and by the Secretary of the
626 Interior in October, 1851, March, 1852, December, 1853, and January, 1854, duly certified and approved to the State of Iowa as having passed to said State under the said act of August 8, 1846, by lists or schedules thereof, duly certified, and approved, and delivered to the State of Iowa by the said Commissioner of the General Land Office, under and with the approval and endorsement of the Secretary of the Interior, as will more fully appear by said certified lists, to which for greater certainty the defendant prays leave to refer.

And this defendant, further answering, alleges and avers that the said Commissioner and Secretary of the Interior were the officers by law authorized and charged with the duty of approving and certifying the said lands to the State under said grant, and that the lists or schedules so certified and approved to the State of Iowa under said grant, embraced, and included, and contained, and covered the land claimed by the complainant in this action.

And this defendant further alleges that the said lists, and the certificates and the approval thereof, and of the lands therein described to the State by the said Commissioner and Secretary of the Interior
627 under the said grant of August 8, 1846, as aforesaid, have never been revoked, recalled, cancelled or annulled, but are still outstanding and operative, and in full force, and have since been fully confirmed by the Congress of the United States by a joint resolution thereof approved March 2, 1861, and by an act thereof passed and approved July 12, 1862; that at the time the said certified lists or schedules were prepared by the Commissioner of the General Land Office, the lands therein were duly marked and entered upon the books and plats of the General Land Office as having been granted to the State of Iowa for the purpose of the improvement of the Des Moines River, under the said act of August 8, 1846, and the same, since the said order of the said Commissioner on the 1 day of June, 1849, as aforesaid, have always and continually been considered, held, and treated by the several Departments of the Government as withheld and reserved from grant, sale, private pre-emption, and homestead entry; that said lands, in fact, since the 1st of June, 1849, have been legally and continuously reserved by the United States by its duly constituted officers and departments, and the said order of reservation has never in any wise, form or man-
628 ner, been recalled, revoked, cancelled, or annulled; that at various times and dates since the said 1st day of June, 1849, the Com-

missioner of the General Land Office and the Secretary of the Interior, being thereunto by law duly authorized and empowered, have recognized and approved, and affirmed, and continued the said order of reservation, and the same is still in force, all which will more fully appear by the respective and several orders and letters, and official papers and documents of said officers relating to the matter of such reservation, and to which for greater certainty this defendant prays leave to refer.

And this defendant, further answering, alleges and avers that, subsequent to such reservation aforesaid, and after said lands were so certified and approved to the State of Iowa under the said grant of August 8, 1846, as aforesaid, and on or about the 9th day of June, 1854, the State of Iowa entered into a contract in writing with said defendant, The De' Moine' Navigation and Railroad Company, for the sale, transfer, and conveyance of all of the said lands in said certified and approved lists and schedules contained and described, (except such parts and portions thereof as the State had sold and disposed of prior to
629 the 23d day of December, 1853,) and to which said contract, for greater certainty, this defendant prays leave to refer.

And this defendant further alleges that, afterwards, for the purposes of a settlement with The De' Moine' Navigation and Railroad Company under the said contract aforesaid, the general assembly of the State of Iowa, on the 22 day of March, 1858, passed and adopted the joint resolution entitled "Joint resolution containing proposition for a settlement with The Des Moine' Navigation and Railroad Company," a copy whereof is set out in the printed bill of complaint at pages 116, 117, 118, & 119, and to which, for greater certainty, this defendant prays leave to refer; that the said De' Moine' Navigation and Railroad Company accepted the propositions for the settlement in the said joint resolution contained, in the manner therein specified and provided, and duly performed and complied with all the terms and conditions imposed upon it in and by said resolution, and in consideration thereof and of the said contract, and the work done by said company thereunder, and in pursuance of said joint resolution and the settlement thereunder, the State of
630 Iowa, on or about the 3 day of May, 1858, by its deeds or patents duly executed and authenticated and delivered, granted, sold, and conveyed to the said company in fee-simple all the said lands in said certified lists described which had not been sold by the State under the said grant of August 8, 1846, (excepting about twenty-five thousand acres lying immediately above the Raccoon Fork,) including the lands lying in the said counties of Webster and Hamilton, and claimed by the complainant in this action, and as will more fully appear by reference to said patents or deeds, and to which this defendant prays leave to refer.

And this defendant, further answering, alleges and avers that the said patents or conveyances from the State were made, executed, and delivered by the proper officers under the said joint resolution and the authority of the State, and upon a good and valuable consideration, and that the said company thereby became and was and is a bona-fide purchaser of the said lands under the State of Iowa; that, subsequent to such conveyance to the said De' Moine' Navigation and Railroad
631 Company by the State of Iowa aforesaid, the said company, for a valuable and adequate consideration to it paid by this defendant, duly bargained, granted, sold, and conveyed to this defendant about eight thousand and five hundred acres of the said lands in Webster and Hamilton Counties now claimed in this action by the complainant, as will more fully appear by reference to the said deed from said company

to this defendant, and to which this defendant prays leave to refer, and that this defendant is a bona-fide purchaser of said tracts so conveyed to him by said company under the State of Iowa.

And this defendant, further answering, alleges and avers that at the December term of the Supreme Court of the United States of the year 1859, and late in the spring of 1860, the said court held and decided that the grant contained in and contemplated by said act of August 8, 1846, did not extend above the Raccoon Fork; that at the subsequent session of the Congress of the United States, that body, for the purpose of protecting the purchasers under the State, including The De' Moine' Navigation and Railroad Company and its grantees, and of carrying out and giving to said act of August 8, 1846, the construction and interpretation
632 which had been given to said grant by the Commissioner of the General Land Office and the Secretary of the Treasury and the other officers as aforesaid, and of confirming the title to the same in the State and its grantees, under the act of August 8, 1846, and on the 2d of March, 1861, passed and adopted the joint resolution entitled "Joint resolution to quiet titles in the State of Iowa," a copy whereof is set out in complainant's bill of complaint, at page 120 thereof.

And this defendant, further answering, alleges and avers that, for the purpose and with the design and intent of extending the said grant of August 8, 1846, to the northern boundary of the State, and of confirming the same and the title to the State and its grantees thereunder, and for the further purpose of giving and adopting and carrying out the construction which had been placed upon and given to said act of August 8, 1846, by the said several officers and Departments of the United States, and protecting The De' Moine' Navigation and Railroad Company, and the grantees of the State, on the 12th day of July, 1862, passed and enacted the act entitled "An act confirming a land
633 claim in the State of Iowa an' for other purposes," a copy whereof is in substance set out in complainant's said bill of complaint, on page 126 thereof, and to which said act this defendant refers.

And this defendant, further answering, expressly alleges and avers that, by the said act of August 8, 1846, the reservation thereunder, as aforesaid, the acts of the several officers and Departments of the United States and the State of Iowa aforesaid, the said contract of June 9, 1844, between the State and the said De' Moine' Navigation and Railroad Company, the joint resolution of the general assembly of the State of Iowa of March 22, 1858, and the settlement and conveyances by the State as aforesaid, the joint resolution of Congress of March 2, 1861, and the act of Congress of July 12, 1862, directly extending and confirming the grant of August 8, 1846, as aforesaid, and the other matters above set forth, The De' Moine' Navigation and Railroad Company acquired and obtained the full, complete, and absolute title thereto, and are entitled to have, hold, possess, and enjoy the respective tracts covered by the respective deeds.

And this defendant, further answering, denies that, under the
634 said act of May 15, 1856, in said complainant's bill of complaint mentioned and referred to, and the act of the general assembly of the State of Iowa, approved July 14, 1856, and also in complainant's said bill of complaint referred to, or either of said acts, the State of Iowa acquired any title as trustee or otherwise to the said lands in complainant's bill charged to be claimed by The De' Moine' Navigation and Railroad Company and its grantees, and also in said bill claimed to be the property of complainant as against The De' Moine' Navigation and Railroad Company; and this defendant expressly avers and insists that

all of the said lands in the alternate odd-numbered sections within five miles of the Des Moines River, and within the limits of the grant to the State for the use of the Dubuque and Pacific Railroad Company, as contemplated by said act of May 15, 1856, were expressly reserved, and never in anywise passed to the State under the said act, as trustee or otherwise, in any manner whatever; and he alleges and avers that the title to the said lands in such odd-numbered sections is now and for a long time has been, by reason of the matters in this answer stated
635 and set forth, fully, completely, and absolutely vested in the said De' Moine' Navigation and Railroad Company and its grantees, and that as against the claim and title of the said company and its grantees, the said complainant has no title to or interest in the said lands whatsoever.

And this defendant denies that the said complainant is entitled to the relief prayed in his bill of complaint herein, or any part thereof.

And this defendant says that he denies each and every material allegation in complainant's bill of complaint contained, not hereinbefore well and sufficiently answered, confessed, and avoided, traversed, or denied, except the allegations relating to The Des Moines Valley Railroad Company and the lands claimed by said company, and in which this defendant claims no interest.

All of which matters and things this defendant is ready to aver, maintain, and prove as this honorable court may direct; and prays that, by reason of the said several matters aforesaid, the title of the defendant, The De' Moine' Navigation and Railroad Company, to the lands
636 herein claimed by said company, be by the decree of this court confirmed, and in all things held and declared valid and paramount, and that the respective titles of the other defendants named in this answer to the several tracts claimed by them respectively, be also, by a decree of this court, confirmed and held and declared valid and paramount and absolute, and that these defendants may have such other and further relief as is agreeable to equity and the practice of this court, and that they be hence dismissed with their costs herein most wrongfully sustained.

J. M. ELLWOOD,
Sol'r for Defendant.

D. O. FINCH,
Of Counsel.

STATE OF NEW YORK,
City and County of New York, ss:

William B. Welles, of said city and county, being duly sworn, deposes and says that he is the defendant in the foregoing answer named; that he has read and heard read the said answer, and knows the con-
637 tents thereof; that said answer is true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters, he believes it to be true.

W. B. WELLES.

Subscribed and sworn to before me by W. B. Wells, this 29 day of September, A. D. 1869.

[SEAL.]

W'M SAVAGE,
Commissioner for Iowa.

(Endorsed as follows:) U. S. circuit court. The Iowa Homestead Company vs. The De' Moine' Nav. & R. R. Co., W'm J. McAlpine, Elic-

tus B. Litchfield, W'm B. Welles, and others. Answer of W'm B. Welles. 121. Filed Nov. 22, 1869. George B. Corkhill, clerk. J. M. Ellwood, sol'r for def't.

638 And on this day, to wit, May 12th, A. D. 1871, comes the plaintiff, by Grant & Smith, its attorneys, and files its replication to the several answers of defendants, which said replication is in words and figures following to wit:

U. S. C. C. D. Iowa.

THE IOWA HOMESTEAD CO.
vs.
THE DES MOINES NAVIGATION AND RAILROAD Company & others. } In equity.

The plaintiff, for replication to the several answers of the defendants, says that the allegations of his bill and amendments are true, and the several answers thereto are each untrue, & this he will aver and prove as this court shall direct.

GRANT & SMITH, *for Pl'ff.*

(Endorsed:) Filed May 12, 1871. George B. Corkhill, clerk.

639 And on the 13th day of May, 1870, there was filed in said cause the following stipulation of parties:

U. S. circuit court, district of Iowa.

THE IOWA HOMESTEAD CO.
vs.
THE DE' MOINE' NAVIGATION AND RAILROAD Company; Samuel G. Wolcott, W. B. Wells, Roswell S. Burrows, Edwin C. Litchfield, W'm J. McAlpine, Richard B. Chapman, Albert H. Tracy, Francis W. Tracy, Harriet Tracy, Electus B. Litchfield, Edward Wade, John Stryker, & others.

It is stipulated and agreed that the joint and several of the defendants, Albert H. Tracy, Francis Tracy, and Harriet Tracy, verified by Albert H. Tracy; the several answers of the defendant W'm B. Wells, sworn to by said Wells, and the joint and several answer of the defendants, Samuel G. Wolcott, Edwin C. Litchfield, W'm J. McAlpine, Richard B. Chapman, Electus B. Litchfield, Edward Wade, John Stry-
640 ker; & The De' Moine' Navigation and Railroad Company, sworn to by Electus B. Litchfield and Nathan T. Higbee, be deemed and taken as the answer of the said defendants herein; and that all previous answers of the said defendants, verified by their solicitor, and filed herein, be withdrawn from file.

(Endorsed as follows:) Iowa Homestead Co. vs. De' Moine' Nav. & R. R. Co. Stipulation to substitute answer. Filed May 13, 1870. George B. Corkhill, clerk.

641 And on this day, to wit, the 9th day of May, 1871, there is filed in said cause the following agreement of parties, to wit:

THE IOWA HOMESTEAD COMPANY
vs.
THE DES MOINES NAVIGATION AND RAILROAD Company, defendants.

Bill in equity in the circuit court of the United States.

It is agreed in this cause, by the plaintiffs and defendants, that all the exhibits or copies of records, correspondence, settlements, lists of lands or other papers which belong to public records of the United States or State of Iowa, copies of deeds, &c., (which are annexed to the bill and answer in this cause,) shall be read at the hearing in the same manner as if formally proved by deposition or certificate under seal, subject to exceptions as irrelevant or incompetant, to prove any fact material to the controversy.

And any other records or official papers from the executive officers of the United States or the State of Iowa, which either party deems material to his cause, may be read, subject to the same exception, upon notice sufficient in time to enable the adverse party to make objec-
642 tion to the genuine nature of such papers. It is further agreed that either party may read, on the hearing, the whole or any part of the record of the cases of The Des Moines Navigation Co. vs. Calvin Burr, & Samuel G. Wolcott vs. The Des Moines Navigation Co., decided in the Supreme Court of the United States, subject to exceptions for incompetency or irrelevancy. All congressional and legislative acts and resolutions which relates to the matters in controversy may be read from printed statutes without proof.

GRANT & SMITH,
For the Iowa Homestead Company.
ELWOOD,
For Des Navigation Co. & Purchasers.

I agree to waiving the necessity of producing the originals or certified copies of all or any the papers & documents referred to in foregoing, and agree that all competent or relevant testimony may be read from printed statutes, or books containing the same, including the report of register of Iowa land-office, without further proof.

HENRY STRONG,
Att'y for D. V. R. R. Co.

(Endorsed :) Filed May 9, 1871. George B. Corkhill, clerk.

643 On the 9th day of May, 1871, there is filed in said cause the following stipulation, to wit:

Circuit court of the United States for the district of Iowa.

THE IOWA HOMESTEAD COMPANY
vs.
THE DES MOINES NAVIGATION COMPANY ET AL.

On the hearing of this cause the plaintiff is permitted to read in evidence, on his part, in the same manner as if formally proved as to execution or identity, and subject to all legal exceptions for irrelevancy or incompetency, the following evidence:

The exhibits annexed to the plaintiff's bill, numbered from 1 to 15;

Exhibit No. 16; report of The Des Moines Navigation and R. R. Company to the governor of the State of Iowa, dated Nov. 15th, 1856; and the fact is conceded that, after that report, the company did no work under the contract referred .

644 Exhibit No. 17; certificate of C. C. Carpenter, register State land-office of Iowa, that the lands claimed by plaintiff, T. 86, 87, & 88, ranges 27, 28, 29, 30 east of Des Moines River and north 2' correction-line, were certified under letter of Sec. Stuart on 29th Oct., 1851, and of Sec. McClelland under act of 1846, and under railway grant of 1856 to Dubuque and Pacific R. R. grant, with a descriptive table of the lands; also, that these lands were not included in the settlement of the State of Iowa under the resolution of 2 March, 1861, in act of 12 July, 1862; also, in same certificate, a copy of the Harvey settlement, and approved by census board, and his report of such settlement.

Also, certificate that the lands, odd sections, in T. 89 & 90, ranges 28 & 29 west, were certified to State of Iowa under railway act of 1856 and no other; that the State of Iowa, in settlement of Harvey in 1866, conceded that Congress had conveyed these lands to the railway company under act of 1856, and received indemnity lands therefor, and that those indemnity lands were included in deed by the State to Des

645 Moines Valley R. R. Co. & the odd sections in T. 89 & 90, ranges 28 & 29, were not.

Exhibit No. 18. Act of the legislature of Iowa of 30th March, 1866, appointing Josiah A. Harvey agent to settle claims of State against the United States.

Exhibit No. 19. A part of the report of A. B. Miller, register of State land-office, to the legislature of Iowa, dated Nov. 7th, 1859, containing a list of the lands then certified to the State of Iowa, under act of Congress of 15th May, 1856, of the State of Iowa, 14th of July, 1856.

Exhibit 20th. Certificate of C. H. Booth, sec. of Dubuque and Sioux City R. R., as to time when the 55,000 acres of land in dispute on east side of Des Moines River and south of 2nd correction-line, and the 20,000 acres in townships 89 & 90 were earned by the Dubuque and Sioux City R. R. Company.

The filing of the charter of the Dubuque and Sioux City R. R. Co., and the transfer to it of the land-grant to Dubuque and Pacific R. R.

646 Company, by decree of the Dubuque district court are dispensed with; the facts, as set forth in the bill, as to that company's organization and purchase of assets of Dubuque and Pacific R. R. Co. are admitted.

The organization and purchase of the lands in dispute by the Iowa Homestead Company, is conceded without the production of the charter.

The tax rec*ie*pts referred to in the bill, being numerous, are dispensed with. If the court should the plaintiff entitled to recover proper receipts, by the proper State officers, must be shown before payment.

It is further agreed that both parties have produced before the court the records in The Des Moines Navigation & R. R. Co. vs. Burr, and same parties against Wolcott, in the Supreme Court of the United States; a copy of them in the transcript is dispensed with. On appeal to the Supreme Court, all parties may refer to the records of them in that court.

647 The following part of the report of the register of the State land-office to the legislature of the State of Iowa, November, 1867, is produced and read in the hearing by the plaintiff.

The Dubuque and Sioux City Railroad is now completed to Iowa Falls,

one hundred and forty-three miles west of Dubuque, with a branch extending from Farly to Cedar Rapids, fifty-six miles; and a feeder from Waterloo to Waverly, some twenty miles; the land which will inure to it on completion amounts to 1,226,538.32 acres.

And it is admitted that said road was completed, under the act of Congress of 1868, within the time limited by the act of the 4th of July, 1870.

It is also admitted that D. W. Kilbourn and Chas. Mason, referred to in the report of Josiah A. Harvey, as agents of The Des Moines Valley R. R. Co., were their agents during the settlement. That D. W.
648 Kilbourn was a director in the company, and located the lands referred to in the special certificate of 300,000 acres by Secretary of the Interior to the State of Iowa, under the act of 12th July, 1862, and knew that said certificate was given to Iowa as indemnity, among other lands, for the lands in controversy in this suit, which were conceded in said settlement to have been disposed of by the United States, to the Dubuque and Sioux City R. R. Co., under the grant of 1856.

It is admitted that the defendants named in the bill were stockholders and directors in the Des Moines Navigation & R. R. Co. in November of 1856, or heirs of such stockholders or directors.

The evidence of Burr, Brown, Wolcott, and Harvey, read in the case of Baker vs. Williams, is read in this cause. Copies of the same are dispensed with in the transcript of this cause on appeal, and either party may refer to them in Supreme Court on appeal.

All acts and resolutions of the Congress of the United States
649 and the State of Iowa pertinent to the cause, may be read on the hearing in this court and Supreme Court, without being set out in the records.

GRANT AND SMITH,
Plaintiffs' Attorneys.

(Endorsed:) Filed May 9, 1871. George B. Corkhill, clerk.

650 And on the 13th day of May, 1871, there is filed in said cause the following stipulation of parties.

In the circuit court of the United States.

IOWA HOMESTEAD COMPANY
vs.
THE DES MOINES NAVIGATION & RAILROAD Company et al.

It is *argued* that either party may read in evidence the printed copy of any act of Congress, or of the legislature of Iowa, or any communication by any officer of the Government of the United States or State of Iowa, subject to objections to the same, on the ground that it is irrelevant or incompetant. All other objections are expressly waived.

After the trial of this cause in this court, the counsel for the parties shall prepare a statement of the papers and documents submitted on the hearing, for the purpose of making up a record for the Supreme Court of the United States. And in said statement no papers or documents shall appear more than once. It is further stipulated
651 that either party may read any portion of the documentary evidence submitted in the cases of Baker vs. Williams and Wells against Riley, subject to objections on ground of incompetency or irrelevancy.

It is further stipulated that the defendants who claim as grantees of The Des Moines Navigation and Railroad Company, have good and sufficient conveyance to themselves, severally, of all the title which the said company ever had in the lands claimed by them.

It is admitted that the Dubuque and Sioux City Railroad Company has whatever title the Dubuque and Pacific Railroad Company had in the lands in controversy.

It is also admitted that the Des Moines Valley Railroad Company complied with the terms *of the terms* of the several acts of the legislature of Iowa granting to it the lands in controversy claimed by said R.
R. Co., completed its road to Fort Dodge before January 1st,
652 1871, and *to* paid to the State of Iowa $160,000 in cash, as required by the act of 1868 for said lands. It is agreed that the only questions submitted on this hearing are, 1st. In which of the parties is the paramount title to the lands in controversy? 2d. If the title shall be adjudged to be in the defendant, the Des Moines N. & R. R. Co., is the plaintiff entitled to be re-embursed the taxes which it has paid on the lands? The amount of taxes paid is admitted to be $2,000. If the court should find that plaintiff is entitled to be so re-embursed, the question of amount so to be re-embursed should be referred to a master, and the defendants shall have the right to show any counter claims or matters which should be considered as reducing the amount to be re-embursed. It is admitted that D. W. Kilbourne was a director in the Des Moines Valley R. R. Co., from 1862 to 1867. It is admitted that the Dubuque and Sioux City Railroad was completed to Sioux City, July 4th, 1870.

GRANT & SMITH,
For Pl'ffs.
WITHROW & WRIGHT,
For D. M. N. & R. R. Co.
H. STRONG &
WITHROW & WRIGHT,
For D. V. R. R. Co.
C. C. NOURSE,
For R. S. Burrows.

(Endorsed:) Filed May 13, 1871. George B. Corkhill, clerk.

653 And on this day, to wit, the 8th day of June, A. D. 1871, there was filed in the clerk's office of said court in said cause the following certificate and agreement, to wit:

U. S. C. C. dis. Iowa.

THE IOWA HOMESTEAD COMPANY
vs.
THE DES MOINES NAVIGATION CO. & OTHERS.

This additional stipulation is made:

That townships 89 & 90, range 29 west, north of the second correction line, were conveyed in 1854.

It is further stipulated with filing the deeds thereof that the plaintiffs have all the title of the Dubuque & Sioux City R. R. Co. to the lands in controversy.

May, 1871.

GRANT & SMITH, *For Pl'ffs.*

654 STATE OF IOWA:

STATE LAND-OFFICE,
Des Moines, May 18, 1871.

I, Aaron Brown, register of the State land-office of the State of Iowa, hereby certify that townships 89 and 90, N. of range 29 west, & west of the Des Moines River, Iowa, were surveyed into sections by the deputy surveyor of the United States, in May, 1854, as appears by the field-notes and plats of the original Government surveys in this office.

SEAL OF THE STATE LAND-OFFICE OF IOWA. In testimony whereof I have hereunto set my hand and affixed my official seal the date first above written.

AARON BROWN, *Register.*

(Endorsed:) Filed June 8, 1871. George B. Corkhill, clerk.

655 Be it remembered that heretofore, to wit, on the 11th day of May, A. D. 1869, in the May term, A. D. 1871, in the records of the proceedings thereof in said entitled cause is the following entry to wit:

THE IOWA HOMESTEAD CO.
vs.
DES MOINES NAVIGATION AND RAILROAD COMPANY. } No. 121. Ch'y.

And now comes Galusha Parsons of counsel for defendants, and says that he desires to appear for certain def'ts, as claimants of certain parts of realty described in the bill, and thereupon leave is granted to said parties to appear as defendants, to answer in 30 days. Copy of answer to be furnished plaintiff's attorneys.

And afterwards, on the 17th day of May, in the May term, A. D. 1869, of said court, in the record of the proceedings thereof in said entitled there appears the following entry, to wit:

THE IOWA HOMESTEAD CO.
vs.
THE DES MOINES NAVIGATION & RAILROAD COMPANY. } No. 121. Ch'y.

656 This day, this cause coming on for a hearing, it is ordered by the court that the order made herein on the 11th day of May, admitting certain defendants to answer in thirty days is set aside, and leave is given to plaintiffs to file printed bill instead of the present bill, and the injunction of the State court is continued, and defendant has leave to answer by the first Monday in August next.

And on the 29th day of October, in the October term, 1869, of said court in the records of the proceedings thereof in said entitled cause, is the following entry, to wit:

IOWA HOMESTEAD CO.
vs.
DES MOINES NAVIGATION AND RAILROAD CO, William B. Welles, A. H. Tracy, Francis W. Tracy, and Harriet Tracy, W'm J. McAlpine, & others. } No. 121. Ch'y.

This cause coming on for hearing, the plaintiff' appearing by Grant,

their attorney, and certain defendants by J. M. Ellwood, their attorney, and file the following stipulation to wit:

657 It is hereby stipulated that the solicitor for def'ts, J. M. Ellwood may withdraw the answers filed by him for certain of the defendants herein, and sworn to by Ellwood, and that in the place thereof he may file answers, or some of them, with the same effect as though the same were filed within the time prayed, by order of this court for answering, (Sept. 25, 1869,) and this cause is continued.

And on this day, to wit, the 13th day of May, in the May term, A. D. 1870, of said court, in the records of proceedings thereof, in said entitled cause, there appears the following entry, to wit:

THE IOWA HOMESTEAD COMPANY, PL'FF, *vs.* THE DES MOINES NAVIGATION & RAILROAD Company, Samuel G. Wolcott, William B. Welles, Roswell Burrows, Edwin C. Litchfield, W'm J. McAlpine, Richard B. Chapman, Albert H. Tracy, Francis W. Tracy, Harriet Tracy, Electus B. Litchfield, Edward Wade, John Stryker, et al., defendants.	No. 120.	Ch'y.

658 This action was commenced in the district court of Webster County, Iowa, at the October term of said district court, the defendants, Edwin C. Litchfield, Electus B. Litchfield, and John Stryker, filed their affidavit, bond, and petition asking the removal of this action from said district court to this court under the provisions of the act of Congress approved March 2, 1867, entitled "An act to amend an act for the removal of causes in certain cases from the State courts," approved July 27, 1866.

And it appearing to said district court that the said Edwin C. Litchfield, Electus B. Litchfield, and John Stryker, were non-residents of the State and residents of the State of New York; and that their application for the removal of this cause to this court is in all respects conformed to the requirements of said act of Congress, the said district court at the October term thereof, in the year 1868, made the usual order transferring and removing this cause to this court, as to the defendants Edwin C. Litchfield, Electus B. Litchfield, and John Stryker, and this cause as to said defendants removed to this court for

659 trial. And it appearing that the defendants Samuel G. Wolcott, Roswell S. Burrows, W'm J. McAlpine, Richard B. Chapman, Albert H. Tracy, Francis W. Tracy, Harriet Tracy, and Edward Wade, are each and every of them non-residents of the State and district of Iowa, and under the statute above referred to are also entitled to a removal of this cause from the State court; and that said defendants with the express consent and approval of the plaintiff have appeared and answered the bill herein and asked to be made parties defendant, and that their rights may be heard and determined in this court and on the trial of this action. And it further appearing to this court that the defendants so asking to be made parties, claim and hold under the same title as the defendants Edwin C. Litchfield, Electus B. Litchfield, and John Stryker, their defense is in all respects identical, with the said plaintiff consenting, it is ordered that the said Samuel G. Wolcott, W'm B. Welles, Roswell S. Burrows, W'm J. McAlpine, Richard B. Chapman, Albert H. Tracy, Francis W. Tracy, Harriet Tracy, and

660 Edward Wade, and each and every of them be made parties defendant herein; that the answer filed by said persons be taken and deemed their answer to the complainants' bill, and that by their appearance and answer herein the said persons be deemed and treated as defendants herein, and their rights in the premises adjudicated in and by this court in this action.

And on the same day there appears the following entry in said cause to wit:

THE IOWA HOMESTEAD CO.
vs.
THE DES MOINES NAVIGATION & RAILROAD Company. } No. 151. Ch'y.

This day this cause coming on for hearing was continued.

661 And on this day, to wit, the 27th day of October, in the October term, A. D. 1870, of said court, in the records of the proceedings thereof in said entitled cause there appears the following entry, to wit:

THE IOWA HOMESTEAD COMPANY
vs.
DES MOINES NAVIGATION AND RAILROAD Company. } No. 121. Ch'y.

Now on this day this cause coming on for a hearing, the complainant appearing by Grant & Smith, and defendant by Finch & Rivers, & J. M. Ellwood, and Strong, the same is continued, with leave to take depositions herein until the next term of this court.

And afterwards, on the sixth day of December, in the October term, A. D. 1870, of said court, in the records of the proceeding' thereof in said entitled cause there appears the following entry, to wit:

THE IOWA HOMESTEAD COMPANY
vs.
THE DES MOINES NAVIGATION & RAILROAD Company. } No. 121. Ch'y.

662 At this day this cause coming on for a hearing the following-named persons were appointed commissioners to take depositions herein, to wit: J. S. Clark, of Polk County; D. W. Middleton, clerk U. S. Supreme Court, Washington, D. C.; J. N. Cornish, of Fremont County; John Ballou, Dubuque.

And afterward, on the 10th day of May, in the May term, 1871, of said court in the record of the proceedings thereof, in said entitled cause, there appears the following entry, to wit:

THE IOWA HOMESTEAD COMPANY
vs.
THE DES MOINES NAVIGATION AND RAILroad Co. et al. } No. 121. Ch'y.

This day this cause coming on for a hearing, the plaintiff appearing

by Grant & Smith, and defendant by Finch & Rivers, and Ellwood and Strong, the defendant by leave of court files his amended answer.

663 THE IOWA HOMESTEAD COMPANY
v.
THE DES MOINES NAVIGATION AND RAILROAD Company et al.

DEFENDANTS' EVIDENCE.

The defendants submit to the court the following evidence:

I. *An act granting certain lands, in the Territory of Iowa, to aid in the improvement of the navigation of the Des Moines River, in said Territory.*

(This act is printed in "Ex. VII" of the plaintiff's bill; p. 54 of the transcript; page 43 of this record.)

II. *Joint resolution accepting the grant of land for the improvement of the Des Moines River, approved January 9th*, 1847.

664 *Resolved by the general assembly of the State of Iowa*, That the donation of land contemplated in an act of Congress approved August 8th, 1846, granting certain lands to the Territory of Iowa, to aid in the improvement of the navigation of the Des Moines River in said Territory, be, and the same is hereby, accepted for the purposes specified in said act: *Provided*, That the said grant of land contemplated in the said act does not form a part or come out of the five hundred thousand acres to which the State of Iowa is entitled upon her entrance into the Union, by virtue of the act of Congress of 1841:

And whereas the general assembly of Iowa does not believe that this grant ought to constitute a part of the five hundred thousand acres granted to the new States: Therefore,

Be it further resolved, That, if such was the intention of Congress in the passage of the law making the grant, that our Representatives in Congress be hereby instructed to use their effort to obtain the same grant contemplated in the act of Congress of August, 1846,
665 and for the same purpose, seperate and distinct from the grant contemplated in the act of 1841.

Resolved further, That, this legislature is of the opinion that it is contrary to the usage of Congress to make donations of lands to States in any manner, except to confine such donation to the particular uses for which it was made; that the restriction in said act of Congress of August, 1846, which confines the State to the sale of no more than thirty thousand dollars at any one time, would render it impossible for the State to prosecute the improvement of the Des Moines River in such a manner as would make it advantageous either to the State or contractor; and that we hereby request our delegation in Congress to use their efforts to procure such a change in the act of August, granting to Iowa lands for the improvement of the Des Moines River, as will authorize the State to sell and dispose of the lands in any quantity and at any time it may be deemed best to effect the contemplated improvement.

666 *Resolved further*, That these resolutions be immediately forwarded to our Representatives in Congress.

Approved January 9th, 1847.

667 III. *An act creating a board of public works and providing for the improvement of the Des Moines River. Approved February 24th, 1847.*

SECTION 1. *Be it enacted by the general assembly of the State of Iowa,* That, for the improvement of the Des Moines River, there shall be established a board to be called the "board of public works" which shall consist of a president, secretary, and treasurer, who shall be elected by the qualified electors of this State on the first Monday of August next, and every two years thereafter, and shall remain in office until their successors are elected and qualified; and before entering upon the discharge of their duties they shall take and subscribe (before some person qualified to administer the same) an oath or affirmation for the faithful and impartial performance of the duties required of them by law, which shall be deposited with the secretary of state.

SECTION 2. In case of a vacancy, occasioned otherwise than
668 by expiration of the terms of service, the governor shall have power to appoint a successor, who shall serve until the place is regularly filled by election, in the manner prescribed in the first section of this act.

SECTION 3. The president shall receive one thousand dollars, and the secretary and treasurer each eight hundred dollars, per annum, payable quarterly. The president shall be the active agent of said board; shall superintend said work, and make report of the progress of contractors, every month or oftener, as the board may direct; and said board shall hold its regular session monthly, but the president may call them together whenever he may deem it expedient.

SECTION 4. Such payments, as well as all other expenses attending the prosecution of the work, shall be paid from the fund resulting from the sale of the donated lands.

SECTION 5. In case of inability of the president to discharge the duties of his office, he may appoint either of the other members of the board to act in his stead.

669 SECTION 6. The board shall have power to procure a chief engineer and such assistants as may be necessary, and to take all other steps for the effectual prosecution of the work, and for the preservation thereof, as fast as it shall be completed.

SECTION 7. They shall have the general supervision and control of said work, and any two of said board shall constitute a quorum; provided, they shall all have been notified to attend, or if, for any reason, the attendance of the third member shall be impracticable.

SECTION 8. The treasurer shall give bond in the penalty of fifty thousand dollars, with securities to be approved by the governor, conditional that he will faithfully perform the duties of his office—account for, and pay over all moneys that shall come into his hands in his official capacity. The president and secretary shall each give bond, with security to be approved in like manner, in the sum of ten thousand dollars, conditioned that they will faithfully perform the duties required of them by law, which bonds shall be filed in the office of the secretary of state.

670 SECTION 9. The board shall make report to the governor, on or before the first day of every regular session of the legislature, giving a full statement of all their doings, and reccommending such legislative action as they may deem expedient.

SECEION 10. No extra allowance shall be made to any contractor or other person, except under circumstances wherein the law would have

compelled such allowance by a private individual. In all such, full statements thereof and the reasons therefor shall be made out and filed in the office of the board.

SECTION 11. The board may sue and be sued in their legal name—service of process upon any member of the board shall be sufficient.

SECTION 12. The board shall establish an officer at some suitable place, which they may remove from time to time, so as to be as convenient as practicable to the land to be sold and the improvement to be made.

671 SECTION 13. The general nature of the said improvement shall be a system of slack-water navigation, by means of dams and locks; but, if, at any particular part of said river, such mode of improvement shall be found improper, such other mode may be adopted as the board may deem best.

SECTION 14. As far as compatible with the advantageous prosecution of the work, the improvement of the river shall commence at either the mouth of the Dead Slough or the mouth of the Massau Slough, on the Mississippi River—thence up the slough to the Des Moines River—unless the board find the improvement of either of said sloughs not best calculated to advance the interest of the State. They shall then be authorized to select such other point for the commencement of the work as they shall deem expedient; and said improvement shall progress regularly up said Des Moines River; and said board may require

672 the proprietors of any mill-dam in said river to place a sufficient lock therein within a reasonable time, or otherwise they may proceed to cause such dam to be removed, or to take such other steps as they may deem proper to render the river navigable.

SECTION 15. The board shall fix upon such dimensions for the locks as, after full inquiry and investigation, they shall deem best adapted to the purpose for which they are intended.

SECTION 16. The dams shall be located, as far as practicable, so as to accommodate the mills and machinery now begun or erected on said river; and the board shall have power to make such arrangements with the proprietors thereof in relation to the water-power as may be just and proper. If no satisfactory arrangement can be made, the board shall have power to proceed with the work, and the fact shall be reported as early as practicable, to the governor, to be laid before the legislature.

SECTION 17. The board shall also have power to make arrange-

673 ments with the proprietors of the lands adjacent to the dams on either side of said river where no mill or machinery shall have been begun or erected, for the purpose of procuring for the State a tract of land sufficient to make the water-power thereby created fully available; if no such satisfactory arrangement can be made, the sheriff of the county shall summon eighteen disinterested and qualified jurors, of whom each party shall strike off six, and the remaining six shall proceed to mark off such tract of land not exceeding ten acres, and to fix the fair value of the same, and upon the payment of that amount the board shall have power, by a bill in chancery, to compel the proprietors thereof to execute a deed to the State: *Provided*, in the opinion of the court, such convention is necessary to render the water-power available.

SECTION 18. The board shall have power to lease out any water-

674 power that may be created by said improvement, for a period of not more than fifty years. They may also make contracts of like duration with individuals, granting them the water-power created

by any dam: *Provided*, They will erect the same, and the necessary appendages, and keep them in repair, upon such conditions and with such securities for the faithful performance of such contracts as they shall deem proper.

SECTION 19. The board may also, as soon as they shall deem it expedient, cause the removal of rocks and other obstructions to the navigation of any part of said river below the Raccoon Forks; and may, after the survey of the river and location of the dams cause such dams to be built at certain points out of their regular order, whenever they think the public interest requires it.

SECTION 20. The board shall have power to take all necessary steps to prevent waste upon the public lands granted for the improvement of the river, and may bring suit to recover damages therefor.

675 SECTION 21. They shall have power to purchase any tract of land which may be found necessary to promote the prosperity of the work, or to accomplish the object contemplated by this act, which tract shall be held and used for the public benefit.

SECTION 22. All charters granted by the legislature of the Territory of Iowa for building dams across said river are hereby declared to be vacated, unless the proprietors thereof will construct dams and locks in accordance with the direction of the board. The board shall require the proprietors, or any person who may have obtained a charter to build one, to build or alter the same so as to correspond with the general character of the improvement of the river, and unless they will comply with such requirement their charter shall be deemed to be vacated, and the board are authorized to proceed to construct the dams or locks themselves; and nothing herein contained shall prevent the board from paying the proprietor of such dams whatever they may deem

676 reasonable in addition to the privileges authorized by this act.

SECTION 23. As far as practicable, the work shall be done and the material furnished by contracts, which shall be given to the lowest responsible bidders, after full public notice shall have been given. When the lowest bid shall not have been accepted, the reason therefor shall be stated and filed in the office of the board, and be subject to public inspection.

SECTION 24. All contracts shall be made in writing, signed by the president of the board and the contractor, and a duplicate thereof filed in the office of the board previous to the commencement of the work; and no contract shall be entered into between the board and either of its members.

SECTION 25. The board shall keep a record of all the proceedings, which, together with all papers filed in their office, shall at all

677 times be subject to the inspection of such persons as the legislature may appoint for that purpose.

SECTION 26. The board shall proceed to sell the lands donated for such improvement as fast as the funds shall be required, and as shall be permitted by the terms of said grant; and for the sale of said land the treasurer shall be receiver, and the secretary shall be register; and the secretary and treasurer, in the discharge of their duties as receiver and register, shall be governed by the laws and rules prescribed by Congress for the sale of lands in this State, so far as applicable under the restrictions of said grant and provisions of this law, subject to such restrictions as may be authorized by this act.

SECTION 27. Any person who, on the first day of January, 1847, was by the then existing laws of this State entitled to a claim upon

678 lands in this act mentioned, or who shall at the time of entering

the same be the owner of such claim shall have the right to enter the same in legal subdivisions of not less than forty acres, unless it be a fractional quarter, at the price of one dollar and twenty-five cents per acre, and the provisions of the several pre-emption laws of Congress passed since the first of June, 1838, and all privileges and benefits thereby granted are extended to the settlers on said lands, as far as the same are applicable, and the same rules and regulations shall be observed in the entry and sale of said lands by the board.

SECTION 28. In all cases when the dams in said river shall abut on lands not then sold, or on which there shall not be a legal pre-emption right, under the laws of the United States, the board shall select a tract of land, not exceeding ten acres in extent, and retain the same in order to render the water-power more valuable, or to be otherwise used for the benefit of the State.

679 SECTION 29. The treasurer and secretary shall establish rules for proof of pre-emptions under this act, as well as for fixing the time when such pre-emptions shall be proved up, and any person who, in making oaths or affirmations in accordance with such rules shall swear falsely, shall be deemed guilty of perjury, and punished accordingly. The said treasurer or secretary or either of them are hereby authorized to administer said oaths.

SECTION 30. At the time of the sale, the treasurer and secretary shall issue their certificates of the same to the respective purchasers, retaining duplicates thereof; patents shall thereupon issue, signed by the governor, subject to such regulations as may be prescribed by law.

SECTION 31. The board shall keep books which shall show the amount of sales, and to whom; the amount and items of money received,

680 and also of all payments made; and intentional fraud or deception used in the keeping such books, or any other of the accounts or papers of the office, either by themselves or persons of their employment, shall subject the offenders to imprisonment in the penitentiary for a period not exceeding three years.

SECTION 32. All laws giving power to the county commissioners of any county to authorize the building of dams across the Des Moines River, be, and the same are hereby, repealed, so far as the same applies to said river below the mouth of the Raccoon River, and no farther.

SECTION 33. When it shall be compatible with the public interest and the vigorous prosecution of the work, the board may, in payment of pre-emption rights, receive labor or materials, or other things deemed necessary; and for this purpose may postpone the day of payment for pre-emptions for such a length of time as to the board may seem reasonable and proper under all the circumstances: *Provided* That nothing in this section contained shall in any manner change the mode of receiving proposals for said work or materials.

681 SECTION 34. The board shall make an estimate monthly of the work as it progresses, and shall make payment for the same, which in no case shall exceed eighty-five per cent. of the amount due for work done until the said work is completed.

SECTION 35. Should it be found impracticable, upon examination and survey, to improve the river in the manner herein contemplated, or if for any other reason the work cannot progress successfully, the board shall report that fact to the governor, and from that time their salaries and all further proceedings shall cease.

SECTION 36. The board may, in all sales of land under this act, reserve to the State the right of using any stone which they may need during the progress of the work for the construction of any part of the

same; and also may reserve from sale such timber-lots as they
682 may deem necessary to furnish timber for locks and dams, or any purpose connected with the work: *Provided*, That the authority in this section granted shall not extend to the reservation of lands upon which, at the time of taking effect of this act, there shall be a valid pre-emption right under 1 Ex. 41, sec. 5.

SECTION 37. This act to take effect and be in force from and after its publication in the weekly newspapers of Iowa City.

Approved February 24, 1847.

683 IV. *Letter of Acting Commissioner Piper to Governor Clark. Oct. 17th, 1846.*

GENERAL LAND-OFFICE, *Oct.* 17, 1846.

His Excellency JAMES CLARK,
Governor of Iowa, Iowa City.

SIR: By the first section of the act of Congress, approved 8th August, 1846, entitled "An act granting certain lands to the Territory of Iowa, to aid in the improvement of the navigation of the Des Moines River, in said Territory," it is enacted "that there be, and hereby is, granted to the Territory of Iowa, for the purpose of aiding said Territory to improve the navigation of the Des Moines River from its mouth to the Raccoon Fork (so called) in said Territory, one equal moiety in alternate sections of the public lands, (remaining unsold and not otherwise disposed of, encumbered, or appropriated,) in a strip five miles in width on each side of said river, to be selected within said Territory, by an agent or agents to be appointed by the governor thereof, subject to the approval of the Secretary of the Treasury of the United States."

Under this grant the Territory is entitled to the vacant lands in the alternate sections within five miles on each side of the Des Moines River, from Sullivan's line, the northern boundary of Missouri, to the Raccoon Fork of the Des Moines River. The act authorizes the selection to be made by an agent or agents appointed by you, but as the grant is limited to one equal moiety of the unsold and unappropriated, &c., to be taken in alternate sections, the only selection which appears to be required, or which can be made under the law, is for you to determine whether you will take the lands in the sections having even numbers, as 2, 4, 6, &c., or those that have odd numbers, as 1, 3, 5, &c. The odd numbers would probably be the most advantageous to the Territory, as in selecting the even numbers you would be deprived of the 16th section in each township, which, as you are aware, is reserved for schools.

Enclosed I send you a diagram of this grant, the boundary being colored pink, the alternate sections blue, and the school-lands brown. I also enclose you a list showing the areas of all the sections, or parts of sections, within this grant, those having odd numbers in one column, and the even numbers in another. When you have determined the sections you will select, please advise the land-officers at Fairfield and Iowa City, who have been instructed to withhold from sale, or entry of any kind, all the vacant and unappropriated land in the sections you may select. Please also advise this office, return the list and diagram, and a list of the vacant lands in the sections selected will be immediately peepared, submitted to the Secretary of the Treasury for his approval, as required by the law, and when approved will be certified to you.

With great respect, your obedient servant,

JAMES H. PIPER
Acting Commissioner.

684 V. *Letter of Acting Commissioner Piper to the register and receiver at Iowa City. Oct. 17th, 1846.*

GENERAL LAND-OFFICE, *Oct.* 17, 1846.

REGISTER AND RECEIVER, *Iowa City, Iowa.*

GENTLEMEN: By the first section of the act of Congress, approved 8th August, 1846, entitled "An act granting certain lands to the Territory of Iowa to aid in the improvement of the navigation of the Des Moines River in said Territory," it is enacted, "That there be, and hereby is, granted to the Territory of Iowa, for the purpose of aiding said Territory to improve the navigation of the Des Moines River from its mouth to the Raccoon Forks (so called) in said Territory, one equal moiety, in alternate sections, of the public lands, (remaining unsold and not otherwise disposed of, encumbered, or appropriated,) in a strip five miles in width on each side of said river, to be selected within said Territory by an agent or agents to be appointed by the governor thereof, subject to the approval of the Secretary of the Treasury of the United States." This grant, you perceive, affects the lands five miles in width on each side of the Des Moines, from the southern boundary of your district to the Raccoon Forks of the Des Moines, as shown by the enclosed diagram.

No action can be had by you in this matter, however, till you are advised by the governor whether he will select the sections with the odd or those with the even numbers.

As soon as you are so advised, you will please reserve from sale or entry of any kind all the unsold and unappropriated lands in the sections selected by him till further orders from this office.

Very respectfully, your obedient servant,

JAMES H. PIPER,
Acting Commissioner.

VI. *Letter of Acting Commissioner Piper to Jesse Williams. Nov. 27th, 1846.*

GENERAL LAND-OFFICE, *November* 27, 1846.

JESSE WILLIAMS, Esq., *Iowa City, Iowa.*

SIR: By a communication from the governor of Iowa, of the 14th inst., it appears that the letter to him from this office, of the 17th ultimo, enclosing a diagram of the grant made by the act of 8th August last, to aid in the improvement of the navigation of the Des Moines River, and containing the views of this office in relation thereto, has not been received; and as the governor requests that further communications on the subject be addressed to you, I enclose for your information a copy of that letter.

It is important to the interests of Iowa that the land officers be advised of the selection you design to make at the earliest practicable period, as the sales are progressing and the grant does not attach till the selection is made, and consequently the lands cannot be reserved till that has been done.

Very respectfully, your obedient servant,

JAMES H. PIPER,
Acting Commissioner.

685 VII. *Williams and Bonney, commissioners, to Governor Clark. Dec. 17th, 1846.*

IOWA CITY, *December* 17, 1846.

To his Excellency JAMES CLARK,
Governor of Iowa Territory.

SIR: The undersigned, commissioners appointed under the provisions of the act of Congress approved August 8th, 1846, making a grant of land for the improvement of the Des Moines River, beg leave to report to your excellency that we have selected the odd sections, as designated on the map furnished by the General Land Office, showing the location of the Des Moines and the sections of land within five miles of said river, which map is herewith returned to you.

Very respectfully, your obedient servants,

JESSE WILLIAMS.
JOSIAH H. BONNEY.

686 VIII. *Williams, commissioner, to the register and receiver at Iowa City, Jan. 10th, 1847.*

TO THE REGISTER AND RECEIVER, IOWA CITY LAND OFFICE,
State of Iowa.

IOWA CITY, *January* 10, 1847.

GENTLEMEN: I have the honor to inform you that the commissioners appointed by the governor of the Territory of Iowa for that purpose have selected the odd sections within five miles on each of the Des Moines River, commencing at the no'thern line of the State of Missouri and terminating at the Raccoon Forks of said river. In accordance with instructions received by me from the Acting Commissioner of the Gen'l Land , I have to request of you to withhold from sale the odd sections, of land as designated above.

Very respectfully, y'r ob't serv't,

JESSE WILLIAMS,
Comm'r, &c.

687 IX. *Commissioner Young to Corkery, secretary of the Iowa board of public works. February 23d, 1848.*

GENERAL LAND-OFFICE, *February* 23*d*, 1848.

SIR: Your communication of the 29th of November last, enclosing a copy of yours of the 22d September last, has been received, and would have received an earlier response but for the erroneous and defective surveys along the Des Moines River, which prevented this office from submitting to the Secretary of the Treasury the selections made by the State of Iowa for the improvement of the navigation of that river, under the act of the 8th of August, 1846. As these surveys have been corrected, action will be had on these selections as soon as possible, and when approved they will be certified to you.

It is not usual to furnish more than a diagram of the grant in cases of this kind, with a certified list of the tracts granted as above mentioned; and these will, of course, be transmitted as they can be prepared.

All the aid that this office can give the board of public works, in the discharge of its duties, will be cheerfully rendered, and, if it is possible to procure copies of the reports of the Topographical Bureau of

the examination heretofore made of the Des Moines River, it will afford me pleasure to do so, and forward them to you.

A question has arisen as to the extent of the grant made to Iowa by the act of 8th of August, 1846, and the opinion of this office has been requested on that point.

By the terms of the law, the grant is of an equal moiety, in alternate sections, of the public lands remaining unsold, and not otherwise disposed of, incumbered, or appropriated, in a strip of five miles in width on each side of the river, to be selected within said Territory, &c., &c., and the proceeds are to be applied in the improvement of the navigation of that river, from its mouth to the Raccoon Forks. Hence the State is entitled to the alternate sections within five miles of the Des Moines River, throughout the whole extent of that river, within the limits of Iowa.

Very respectfully, your obedient servant,

RICHARD M. YOUNG,
Commissioner.

CHARLES CORKERY, Esq.,
Secretary of Board of Public Works, Fairfield, Iowa.

688 X. *Corkery, secretary, &c., to Commissioner Young, dated Sept. 18th, 1848.*

(This letter is printed in Exhibit VII to plaintiff's bill, page 57 of the transcript, and page 45 of this record.)

XI. *Corkery, secretary, &c., to Neely, register, &c., September 18th, 1848.*

(Printed in Exhibit VII to plaintiff's bill, transcript p. 58, this record p. 46.)

XII. *Dodge, Jones, Leffler, and Thompson (Iowa congressional delegation) to Secretary Walker. January 8th, 1849.*

(Printed in Exhibit VII to plaintiff's bill, transcript p. 59, this record p. 46.)

XIII. *Reply of Secretary Walker to No. XII, March 2nd, 1849.*

(Printed in Exhibit VII to plaintiff's bill, transcript p. 61, this record p. 48.)

689 XIV. *Secretary Walker to Commissioner Young. March 2nd, 1849.*

TREASURY DEPARTMENT,
March 2d, 1849.

SIR: For your information and government on the subject to which it refers, I enclose a copy of a letter addressed by me, under this date, to members in both Houses of Congress from the State of Iowa, with reference to the construction of the act of 8th of August, 1846, granting certain lands to the Territory of Iowa to aid in the improvement of the navigation of the Des Moines River. I also enclose a letter to which the within is a reply, and accompanying papers.

Very respectfully,

R. J. WALKER,
Secretary.

R. M. YOUNG,
Commissioner.

690 XV. *Commissioner Young to the register and receiver at Iowa City. June 1st, 1849.*

GENERAL LAND-OFFICE, *June* 1, 1849.

REGISTER AND RECEIVER, *Iowa City, Iowa:*

GENTLEMEN: The Secretary of the Treasury having decided that the grant to the State of Iowa, under the act of the 8th of August, 1846, extended along the Des Moines River to its source, and that it did not stop at the Raccoon Forks, as this office had previously decided, you are hereby directed to withhold from sale all the land situated in the odd-numbered sections within five miles on each side of that river above the Raccoon Forks.

Enclosed I send you a diagram, upon which the State selections above that point are colored yellow. I have also to request that you will make out a list showing the sales and locations which have been made within these sections, as it is designed to endeavor to procure some legislative action on the part of Congress confirmatory of them.

The diagram enclosed extends to 83 N., 26 W., being as far as the surveys have progressed in that direction.

I am, very respectfully, your obedient servant,

RICHARD M. YOUNG.

691 XVI. *Bowen, register, and Morris, receiver, to Commissioner Young, in reply. June 16th, 1849.*

LAND-OFFICE, IOWA CITY, *June* 16, 1849.

SIR: Your letter of the 1st instant, directing us to withhold from sale the sections above the Raccoon Forks of the Des Moines, together with the accompanying diagram, were received yesterday. We will attend to the duties imposed by your letter at the earliest practicable moment, and transmit to your office the abstract showing the sales and locations on the State sections.

We are, very respectfully, your obedient servants,

JESSE BOWEN, *Register.*
EASTON MORRIS, *Receiver.*

(Endorsed:) "Acknowledges the receipt of Commissioner's letter of the 1st inst., directing the odd sections above the Raccoon Fork to be withheld from sale."

691½ XVII. *Bowen, register, to the Commissioner of the General Land-Office, June 21st, 1849.*

REGISTER'S OFFICE, IOWA CITY, IOWA,
June 21, 1849.

SIR: I herewith transmit to you a list of the sales and locations of lands in the odd sections within five miles of the Des Moines River, above the Raccoon Forks of said river, in obedience to your instructions of June 1, 1849.

Very respectfully, your obedient servant,

JESSE BOWEN, *Register.*

HON. COMMISSIONER OF THE GENERAL LAND-OFFICE.

692 XVIII. *Butterfield, Commissioner of the General Land-Office to Williams. December 19th, 1849.*

(This letter is printed in Exhibit VII of plaintiff's bill, transcript p. 63, this record p. 49 .)

XIX. *Report of the Secretary of the Interior in answer to a resolution of the Senate.*

DEPARTMENT OF THE INTERIOR,
Washington, January 17, 1850.

SIR: In obedience to a resolution of the Senate of the seventh instant, I herewith transmit a letter and statement from the Commissioner of the General Land-Office, showing the amount of public lands originally contained in each State, the number of acres granted to each State for objects of internal improvement, the number of acres necessary to make the grants to each State equal to the maximum of the State receiving the greatest quantity, and the number of acres
693 necessary to make each grant equal in proportion to the areas of each of the several States.

I am, sir, with much respect, your obedient servant,
T. EWING, *Secretary.*

Hon. MILLARD FILMORE,
President of the Senate.

GENERAL LAND-OFFICE, *January* 14, 1850.

SIR: In compliance with the resolution of the Senate referred by you to this office on the 8th instant, I have the honor to furnish the accompanying statement, showing the amount of public lands originally contained in each State respectively, the number of acres granted to the different States for objects of internal improvement, the number of acres necessary to make the grants to each State equal to the maximum quantity now granted to the State which has received the greatest quantity, and also the number of acres necessary to make each grant equal in proportion to the areas of each of the several States.

In this statement no reference is had to lands granted to Tennessee, and I beg leave to give the following as a brief history of the
694 lands in said State.

The estimated area of Tennessee is 28,160,000 . In the cession made by North Carolina, of this State, the bounties granted to her officers and soldiers were reserved, also all entries, grants, rights of occupancy, pre-emptions, &c. On the 6th of April, 1806, an act was passed by Congress for the purpose of defining the limits of the vacant and unappropriated lands in this State, by which a boundary was established, subsequently called the Congressional reservation line, and all the lands south and west of that line were declared the property of the United States, and the rest were relinquished by the United States to Tennessee, for satisfying the grants, &c., specified in the original deed of cession, and for certain other purposes specified in that law. The lands thus inuring to the United States south and west of that line amounted in area to 8,500,000 acres, of which there had been granted by North Carolina, prior to the deed of cession ..... 942,378 acres.
There were adjudicated under the laws of Tennessee 3,550,413 "
And otherwise disposed of ..... 653,385 "
695
Total ..... 5,146,176 acres.

Leaving the United States, of the whole cession, only 3,353,824 acres of vacant and unappropriated land, fit for cultivation; all of which has since been granted to Tennessee.

With great respect, your obedient servant,

J. BUTTERFIELD, *Commissioner.*

Hon. T. EWING,
Secretary of the Interior.

Statement showing the amount of public land originally contained in each of the several land States; the number of acres necessary to make the grants to each State equal to the maximum quantity granted to the State which has received the greatest quantity; and also the number of acres necessary to make the grants equal in proportion to the net areas of public land originally contained in each State.

696

States.	Amount of public land originally contained in each State.	Number of acres granted to each State for objects of internal improvement.	Number of acres necessary to make the grants to each State equal to the maximum of the State receiving the greatest quantity.	Number of acres necessary to make each grant equal in proportion to the area of each of the several States.
Ohio	* 18,157,400	‡ 1,260,052	349,810	119,958
Indiana	21,181,659	1,609,862		
Illinois	35,221,309	500,000	1,109,862	2,176,912
Missouri	41,738,157	500,000	1,109,862	2,762,210
Alabama	29,668,633	500,000	1,109,862	1,754,848
Mississippi	22,808,188	500,000	1,109,862	1,233,482
Louisiana	22,901,806	500,000	1,109,862	1,240,759
Michigan	35,759,509	500,000	1,109,862	2,217,817
Arkansas	33,288,269	500,000	1,109,862	2,029,996
Florida	35,991,503	500,000	1,109,862	2,235,449
Iowa	† 32,465,777	825,078	784,783	1,642,407
Wisconsin	34,336,585	858,400	751,462	1,751,271
Total	363,518,195	8,553,492	10,764,951	19,074,947

* In this State the Indian lands, private claims, Connecticut western reserve, Virginia military lands, have been taken from its whole area. In the other States, Indian lands and private claims have been deducted to give the net areas, as shown in the second column of this statement.

697 † This amount, in accordance with the decision of the late Secretary of the Treasury, of the 2nd March, 1849, will be increased, by the unadjusted portion of the grant for the improvement of the Des Moines River situated between the "Raccoon Fork" and the source of said river, estimated to contain about 900,000 acres.

‡ The precise quantites granted to Ohio under various acts of Congress, for internal improvements, have not been fully ascertained. The quantities selected are as shown upon the "tract-books."

J. BUTTERFIELD, *Commissioner.*

GENERAL LAND OFFICE, *January* 14, 1850.

698 XX. *Butterfield, Commissioner of the General Land-Office, to Secretary Ewing. March 13th, 1860.*

GENERAL LAND-OFFICE,
March 13th, 1850.

Hon. THO'S EWING, *Secretary of the Interior.*

SIR: Under the first section of the act of the 8th August, 1846, entitled "An act granting certain lands to the Territory of Iowa to aid in the improvement of the navigation of the Des Moines River, in said Territory, there was granted to the said Territory, (now State,) for the purpose of aiding said Territory" to improve the navigation of the Des Moines River from its mouth to the Raccoon Forks, (so-called,) in said Territory, one equal moiety, in alternate sections of the public lands, (remaining unsold and not otherwise disposed of, encumbered, or

appropriated,) in a strip of five miles in width on each side of said river.

Under this act this office decided that the grant did not extend beyond the Raccoon Forks, and, as it was supposed, finally closed it to that point.

From this decision the State took an appeal to the Secretary of the Treasury, who, on the second March, 1849, decided that it extended to the source of the Des Moines.

After this grant had been, and was supposed, finally closed under the decision of this office, the surveyed lands above the "Raccoon Fork" were brought into market under the proclamation of the President, and the tracts embraced by list "No. 2," sold prior to the 16th June, 1869, the date of the receipt of the letter communicating the decision of the Secretary of the Treasury.

It is submitted whether, under the decision of the Secretary,
699 any sales made in the odd-numbered sections above the "Forks," subsequently to the 17th December, 1846, (the date when the agent of the State selected the odd sections as her moiety,) are or are not illegal. A doubt arises with me as to whether they are, from the fact that there has never been any direct special selection of the odd sections above the "Fork."

On the 17th October, 1846, a letter was addressed to the governor of Iowa, (a copy of which accompanies this,) stating that the extent of the grant was from the northern boundary of the State of Missouri to "Raccoon Fork," and that the only selection which appears to be required, or which can be made under the law, was for him to determine whether he took the land in the sections having even numbers or those having odd numbers.

A diagram of the extent above indicated accompanies the letter. In reply the duly authorized agent of the State advised this office on the 17th Dec'r, 1846, that the odd sections, as designated on that diagram, had been selected as the State's quota.

This is the only action which has been had by the agent in
700 relations to the sections, and although they were advised that that was all that was required, it may be doubted whether it is sufficient*ly* to justify the Department in declaring all the sales embraced by list "No. 2" illegal. Should you decide that the sales are illegal, the tracts embraced by list No. 1, showing the tracts in those sections above the "Fork," and within five miles of the Des Moines River, so far as the surveys have progressed in that direction, whether sold or vacant, belong to the State, and are respectfully submitted for your approval.

The purchasers of those embraced by list No. 2 will then be entitled to have their purchase-money refunded unless the State should, as it is supposed she will, waive her right thereto upon the conditions that Congress, by future legislation, authorize her to select an equal quantity in lieu thereof elsewhere.

Should you, however, decide that the sales are legal, the State loses the lands embraced by list No. 2, and a list showing the uninterfered-with tracts No. 3 is herewth submitted for your approval.

I am of the opinion that sales embraced by list "No. 2," being
701 made before any actual sec*t*ion was made, should stand, and that, if the State has any equitable claim for the same quantity of land elsewhere, she can apply to Congress for a grant thereof.

With great respect, your ob'd't serv't.

J. BUTTERFIELD,
Commissioner.

P. S.—I have also the honor to submit herewith the original argument of the Iowa delegation, upon which the decision of the Secretary of the Treasury within referred to was based, as also the original letter communicating that decision, both of which it is respectfully requested may be returned.

J. BUTTERFIELD.

702 XXI. *Secretary Ewing to the Commissioner of the General Land Office. April 6th, 1850.*

(Printed in Exhibit VII to the plaintiff's bill, transcript p. 65, this record p. 49.)

XXII. *Captions of lists of lands referred to in No. XXI.*

Captions of the three lists which were before Secretaries Ewing and Stuart, which were returned with Mr. Ewing's letter of April 6th, 1850, to the General Land-Office, and, by direction of Mr. Stuart, re-submitted to him Oct. 30, 1851.

"List No. 1. Showing the tracts falling within the limits of the Des Moines grant above the Raccoon Forks of the Des Moines River, so far as the surveys have extended, under the decision of the Secretary of the Treasury of 2d of March, 1849, that such grant extended to the north boundary of the State," December 22, 1849.

"List No. 2. Showing the tracts which have been disposed of subsequently to the 24th August, 1848, (being the date of the receipt by the said officers, of the letter of 7th of August, 1848, indicating that
703 the grant extended only to the Raccoon Forks of the Des Moines River,) and previous to the 16th of June, 1849, the date of their reception of the letter from this office of June 1, 1849, communicating the Secretary's decision of 2d of March, 1849, that said grant extended beyond said point, and to the north boundary of the State."

List No. 3. Showing the vacant tracts within the odd-numbered sections within five miles on either side of the Des Moines River."

704 XXIII. *Jones, Dodge, Thompson, and Leffler (Iowa delegation in Congress) to the President, April 14th, 1850.*

WASHINGTON, *April, 14th*, 1850.

To the PRESIDENT:

The Senators and Representatives from the State of Iowa, believing that great injustice will be done the State and people they represent, by an opinion and order of the Hon. Tho's Ewing, Secretary of the Interior, bearing date the sixth of April, 1850, by which the grant of land made to the State of Iowa by the act of the 8th of August, 1846, is restricted to the "Raccoon Fork," (so called,) beg leave to enter our solemn protest against the carrying into effect of said opinion by the Executive Department of the Government, for the following reasons:

First. Because there is granted to the State of Iowa, in language clear & unambiguous, by the before-mentioned law: "One equal moiety, in alternate sections, of the public lands, (remaining unsold and not otherwise disposed of, encumbered, or appropriated,) in a strip five miles in width, on each side of said river, (the Des Moines.)

Second. Because the question of the extent of the grant under consideration having arisen during the late administration, was decided in

favor of the State of Iowa, on appeal and argument by the Hon. R. J. Walker, then Secretary of the Treasury, in an opinion given by him, which bears date the second of March, 1849.

Third. Because, upon the promulgation of the decision of the late Secretary of the Treasury, it being regarded as final and conclusive, the authorities of the State of Iowa have proceeded to contract
705 heavy pecuniary obligations in anticipation of the proceeds of the said lands thus adjudged to be applicable to the improvement of the navigation of the Des Moines River.

Fourth. Because we sincerely believe that, under the act of the 8th of August, 1846, and the decision of the late Secretary of the Treasury, before mentioned, that the State of Iowa has, for the purpose and on the conditions mentioned in said law, a vested right to the lands in question, and so believing we do not doubt that her authorities will resist, by every proper means in their power, the sale of these lands by the United States.

Fifth. Because we humbly conceive that the Secretary of the Interior, unintentionally and with good motives we doubt not, has transcended his legitimate authority in re-opening, of his own volition, and reversing a decision of the Secretary of the Treasury in a matter of this character,

For these and other reasons not deemed necessary to be enumerated, we appeal to you to protect our young State and her enterprising citizens, already environed by those difficulties and hardships ever attendant upon the settlement of new countries, from the incalculable loss and embarrassment which will be entailed upon her and them should
706 the decision of the late Secretary of the Treasury in relation to the grant of land for the improvement of the navigation of the Des Moines River be reversed.

We are, with the highest consideration of respect,

GEO. W. JONES.
A. C. DODGE.
W'M THOMPSON.
SHEP'D LEFFLER.

707 XXIV. *The opinion of Attorney General Johnson, July 19th, 1850.*

ATTORNEY GENERAL'S OFFICE, *July* 19, 1850.

SIR: The questions presented in the matter of the Des Moines grant, made to the Territory of Iowa by the act of Congress of the 8th of August, 1846, upon which, under an appeal to your predecessor from the decision of the Secretary of the Interior, he required the opinion of this office, are—

1st. What is the extent of the grant? and

2nd. Had it been finally adjudicated before the decision appealed from was made?

First, then, is the strip five miles in width on each side of the Des Moines River, granted, limited in length to what is called the Raccoon Fork; or is the grant co-extensive with the length of the river? The grant is made by the first section of the act, and is in these words: "There be and hereby is granted to the Territory of Iowa, for the purpose of aiding said Territory to improve the navigation of Des Moines River from its mouth to the Raccoon Fork, (so called,) in said
707½ Territory, one moiety of the public lands remaining unsold and not otherwise disposed of, encumbered, or appropriated, in a strip of five miles in width on each side of said river, to be selected by an agent or agents to be appointed by the governor of said Territory, subject to

the approval of the Secretary of the Treasury of the United States." The Commissioner of the Land-Office and the Secretary of the Interior think that the Raccoon Fork is the limit of the grant, and its northern terminus.

I do not concur in this view. In my opinion, the fork is mentioned only as the point to which, from the mouth of the river, the improvement of the navigation of the river is to be made. The true reading of the act, I think, is that the land is to run the entire length of the river within the then Territory of Iowa, and the object to be accomplished by it the improvement of the navigation up to the fork.

The purpose is one thing, the extent of the grant another. It
708 is by confounding the two in themselves, as stated in the act, wholly distinct, and considering them as limiting each other, that the error of the opposite construction consists. They have, in my judgment, nothing to do with each other. This will, perhaps, be made the more obvious by transposing the language of the act. Place the terms of the grant first and those of the purpose of making it last, and the meaning is apparent. It would then read: "There be, and hereby is, granted to the Territory of Iowa one moiety of the public lands remaining unsold, and not otherwise disposed of, encumbered, or appropriated, in a strip five miles in width on each side of the Des Moines River, to be selected," &c., * * "for the purpose of aiding said Territory to improve the navigation" of said river "from its mouth to the Raccoon Fork, (called,) in said Territory."

If these were the terms of the grant, no doubt could exist, I think,
709 that the only limit of it was the river; and yet I cannot see that the meaning is not precisely the same of the terms actually adopted. The river limits the grant, although a portion only of the river is to be improved.

The other interpretation requires, to maintain it, that you add to the words adopted, describing the extent of the grant, "five miles in width on each side of said river" the other words, "from its mouth to the Raccoon Fork," previously used but to describe the extent of the improvement. Where is the authority for such an interpretation? Where the words of a statute are clear, it is contrary to every rule of construction to supply others on the conjecture that they were accidently omitted. The inference, when those used are unambiguous, is, that the legislature meant precisely, and only meant, what they import.

But the 3d section strengthens, I think, my opinion upon the first. By that it is provided "that the said river Des Moines be and forever remain a public highway for the use of the Government of the United States," &c. What is the extent of this stipulation? Is it that the highway on the river is restricted to the fork, or co-extensive
710 with the river? I think there can be no doubt that the latter is the true meaning; and if it be, it is only because there is nothing to limit the provision to any part of the river; and yet the words are in this respect the same as those used in the grant in the first section. It is supposed that this construction is erroneous because, to the report of the committee of the House respecting the bill before introduced and referred to them, there is attached a letter from the Commissioner of the Land-Office, stating that it extended to the Raccoon Fork. When the words of a statute are doubtful, it is legitimate to refer to such sources of information. But when it is otherwise—when there is no ambiguity, as I think is the case within this statute, there is no warrant for qualifying them by reports, or speeches, or votes, which may have preceded its passage. This doctrine is clearly recognized by the Supreme

Court of the United States in the case of Aldridge vs. Williams, (3 Howard, 24.)

711 Nor is there anything in the objection that the improvement is limited, and that that should be held to limit the grant. The fact is not so. The lands of the United States throughout the extent of the river will feel the benefit of the improvement in an enhancement of value. The whole river, therefore, participates in the advantage of the work; and, upon the very policy which has heretofore governed Congress in such cases, it is fair to presume that the lands granted were limited by the whole river, and not by a part of it.

Nor do I think that it is consonant with the policy of such dispositions of the public lands to bring to the statutes by which they were made a narrow construction. It is a large and enlightened policy, ever favored by Congress, and should be executed, even in cases of doubt, rather in a large and liberal than a restricted spirit.

712 Secondly. I am of opinion that the question had been finally adjudicated by the Secretary of the Treasury before it was decided by the Secretary of the Interior. The facts are these: The Commissioner of the Land-Office, who had originally construed the grant as I do, changed his opinion, and advertised for sale, in the usual way, the lands above the fork. As soon as this was known, the Senators and Representatives of Iowa, on the 8th of January, 1849, on an appeal taken to Mr. Walker, complained of the construction, and requested him to give the necessary instructions for the selection and approval of these lands along the entire route of the Des Moines, as contemplated by law," and the question was carefully considered by the Secretary, and decided by him on the 2d of March, 1849. On that day he advised those gentlemen of the decision, and communicated it on the same day to the Commissioner in an official letter, now on file with the papers, for, to use the language of the letter, the "information and government of that officer" on the subject to which it refers.

713 From that time to the recent opposite opinion of the present Commissioner, the question was considered as closed by the decision of Mr. Walker. This appears from the report of R. M. Young, afterwards transmitted to Congress; and also by a report of the present Commissioner transmitted to the Senate by the Secretary of the Interior on the 21st of that month. (Ex. Doc. 1st sess. 31st Congress, No. 17.) In this report, showing the amount of public land granted to Iowa among other States, there is attached this note: "The amount, in accordance with the decision of the late Secretary of the Treasury of the 2d of March, 1849, will be increased by the unadjusted portion of the grant for the improvement of the Des Moines River, situated between the Raccoon Fork and the source of said river, estimated to contain 900,000 acres."

714 The design of the Secretary himself to have decided it, and his belief that he had so decided, appears by a letter from him to the Senators of the State, now on file, dated the 15th instant and hereunto annexed. Upon the faith of this determination I am advised that the proper authorities of the State have entered into large contracts for the improvement of the river; and it would therefore, I think, be the extreme of injustice to revoke it. And I am, therefore, glad to be of the opinion that it cannot be legally revoked. It was a final adjudication—so considered by all parties—by the Secretary, by the Commissioner of the Land-Office, and so acted upon by Iowa, whether right or not is now immaterial. It is beyond the control of the Secretary of the Interior, the successor in this respect of Mr. Walker, and of any other

executive officer. (Bank of the Metropolis vs. The United States, 15 Peters, 401.)

715 I have the honor to be, with regard, your obedient servant,

REVERDY JOHNSON.

To the PRESIDENT.

716 XXV. *Butterfield, Commissioner, to the President, Sept. 19th, 1850.*

GENERAL LAND OFFICE,
September 19th, 1850.

His Ex'y M. FILLMORE,
President of the United States.

SIR: I have the honor to acknowledge the receipt of the letter from several members of the Senate and House of Representatives referred by you to this office, asking that the sale of the lands within twenty-five miles of the supposed route of the railroad from Chicago to Mobile be suspended for six months, or until the lands shall have been located, in order that the act may be fully carried out that was recently passed by Congress, granting the right of way, and making a grant to the States of Illinois, Mississippi, and Alabama, in aid of the construction of that road; and, in accordance with your instructions, beg leave to report:

That, so far as I have been able to examine the question, no authority has been specifically conferred upon the President, by law, to suspend the sale of lands in cases of this character, where they have been proclaimed and offered at public sale. It would appear, however, that he has always been considered as having that authority, by implication, from the nature of the duties devolved on him by the whole system of laws making provision for the sale and disposition of the public domain. For the cases, among others, in which this authority has been exercised by the President, I refer to a letter from this office to the register at Piqua, Ohio, on the 28th September, 1828, and which is as follows, to wit:

"The President, having been advised by the governor of Ohio that the route of the canal from Dayton to Lake Erie, by the Maumee, will probably pursue the course of the Auglaise River from the head of some one of its branches to its mouth, he has directed that the lands lying on the same, and to the extent appropriated by the act passed the 24th of May last, be reserved from sale till further advised. The governor of Ohio has been requested to designate to you that branch of the Auglaise on which the canal will most probably be located.

"With respect, &c.,

"GEO. GRAHAM,
"*Commissioner.*"

Similar instructions were issued by Commissioner Blake to the land-office at Green Bay, on the 11th April, 1844, for reserving the lands along the Wisconsin and Fox Rivers, in anticipation of the passage of an act making a grant for the improvement of those rivers, and the reservation then ordered was extended by instructions to those offices of the 8th August, 1846, the day on which the law was passed by Congress, making the grant.

In many other cases, the same authority has been exercised, but to a less extent. The foregoing, however, being of an early and late date, are deemed sufficient to show that the President has always been regarded as having this authority. And as it has thus been exercised, and in the present case must of necessity be inferred to enable the

Executive to secure to the States mentioned and the General Government the benefits conferred by the law, and thus carry out the intention of Congress in passing it, I respectfully recommend:

That instructions be issued to the land-offices in Illinois to withhold from sale, or location of any kind, till further ordered by this office, all the lands belonging to the Government within three full townships, or eighteen miles on each side of the supposed line of this road; and that the land-offices in Mississippi and Alabama be instructed to withhold, in like manner, all the lands within four full townships, or twenty-four miles on each side of said route.

The lands can be suspended from sale much more conveniently by townships than by any other given distance, and the reason for recommanding the withholding of a less extent in Illinois than in the other States, is, that the lands in that State are more sought by actual settlers at this time than in the others, and the general route that the road will pass can be more nearly ascertained.

All of which is most respectfully submitted.

With great respect, your obedient servant,

J. BUTTERFIELD,
Commissioner.

717 XXVI. *Butterfield, Commissioner, &c., to the President, Sept. 26th, 1850.*

GENERAL LAND-OFFICE, *September 26th*, 1850.

SIR: By the act of 8th August, 1846, "granting certain lands to the Territory of Iowa, to aid in the improvement of the navigation of the Des Moines River, in said Territory," it is provided that the lands granted by that act shall "be selected within said Territory by an agent or agents to be appointed by the governor thereof, subject to the approval of the Secretary of the Treasury," &c.

The authority to approve these selections thus given to the Secretary of the Treasury was transferred to the Secretary of the Interior by the act of 3rd March, 1849. If, then, the Secretary of the Interior is satisfied that the selections made under the act of 1846 are of land embraced by the grant, and subject to such selection, he will approve them: otherwise he will not, and the selections are void.

The Attorney General, in an opinion of the 19th July last, given on this law, that "the true reading of the act is, that the land granted is to run the entire length of the river within the then Territory of Iowa," "and that the language of the act clearly & without ambiguity expresses this fact."

718 If this construction is adopted the grant must be regarded as co-extensive with the river, as far as it is known by the name of the Des Moines, within the Territory of Iowa. According to Nicollet's map this river runs from its source a distance of ninety-five miles through the Territory north of the State of Iowa, and which was part of the Territory of Iowa at the passage of the law, before it enters the State of Iowa; and as that State only claims the lands on each side of the river within the limits of the State, this opinion of the Attorney General, if sustained, would give the State about three hundred and four thousand acres more than she claims, and present the singular anomaly of a State exercising ownership over lands outside her limits. The whole history of the land system does not present a precedent to this,* and hence without the clearest and fullest evidence that such was the intention of Congress in passing the law, that construction should

not be given to it. So far from there being such evidence, the history of the case will, in my opinion, satisfy you that Congress intended the grant to be limited to the Raccoon Fork.

The third section of this act, when understood with reference to the character of this stream, so far from strengthening this opinion
719 of the Attorney General as stated by him will sustain my view of the case. That section declares "that the said Des Moines River shall be and forever remain a public highway for the use of the Government of the United States, free from any toll or any other charge whatever for any property of the United States, or persons in their service, passing through or along the same." This is the consideration mentioned in the grant; and another, as suggested by the Attorney General, is the enhanced value of the lands adjacent to the improvement and caused by it. The river, it is understood, is not navigable above the Raccoon Fork, nor is it proposed to attempt to make it so; hence the U. States cannot enjoy the consideration specified in the grant above that point; nor will their lands along that part which will not be made navigable be enhanced in value by this improvement.

The Attorney General evidently labored under the impression that this river was navigable through its entire length, except along the proposed improvement; for he asks, "What is the extent of this stipulation? Is it that the highway on the river is restricted to the fork, or co-extensive with the river? I think there can be no doubt that
720 the latter is the true meaning, and if it be it is only because that there is nothing to limit the provision to any part of the river, and yet the words are in this respect the same as those used in the grant. From this it is evident that he considered the grant and the stipulation of free navigation co-extensive; and if he had been advised that the highway on the river was restricted to the fork by natural causes, he would have considered the grant as restricted to that point also. If this river was navigable without this improvement, the stipulation of free navigation was surplusage, as, by the act of 18th May, 1796, it is stipulated "that all navigable rivers within the Territory to be disposed of by virtue of this act shall be deemed to be and remain public highways;" and this provision has been carried throughout the whole of the public domain.

From the foregoing it is evident that the language of the law is of doubtful import at least, and, such being the fact, we are authorized by the decision of the Supreme Court referred to by the Attorney General, (3rd Howard, p. 24,) to ascertain the will of Congress on the subject, by comparing that language with the laws upon the same subject, and looking to the history of it at the time it was passed. In no
721 case does a grant of this kind extend beyond the contemplated improvements, and, therefore, by this rule, it would be limited to the Raccoon Fork. The same result will be obtained by examining the history of the bill and of the act which grew out of it. Such was the opinion of the Delegate from Iowa, who introduced this bill; of this office in estimating the amount of land embraced by it; of the committee of Congress who reported on it; of this office in issuing the instructions under the law; of the legislature of Iowa in accepting it, and of this office in executing it; and the claim that the grant extended above the Raccoon Fork was an afterthought, not suggested till three years after the passage of the law, all which is shown in the report from this office of 13th June, 1850, herewith.

That the opinion of Mr. Walker was not a decision on the case is also

evident from the facts in it. This office was not advised of any appeal having been taken from its decision; no report on the case was required by the Secretary, or made to him; nor were the papers, the evidence, or facts in the case before him at the time he gave that opinion. Hence it cannot, with any kind of propriety, be designated in the legal acceptation of the term as a decision, but must be regarded, under the
722 circumstances of the case, as an opinion only, given on an ex-parte showing.

Even, however, if it be regarded as a decision, it is not conclusive, as supposed by the Attorney General, for the reason that his case is wholly different from that referred to by him in 15th Peters, 401. In that case a credit had been allowed to a contractor by the head of a Department, which his successor proposed to disallow. In the case now under consideration the Secretary of the Interior would be required to carry out the opinion of his predecessor by approving selections, though he might regard those selections as illegal, notwithstanding his oath of office faithfully to execute the trust committed to him; certainly no opinion or decision could entail such a consequence.

As to the obligations which have been incurred by the authorities of Iowa, on the faith of Mr. Walker's opinion, stated by the Attorney General, there is no evidence in this office of that fact; but, admitting it is so, it should have no weight in deciding this question, though it might form a strong plea before Congress if it is not a violation of the provisions of the second section of the law. It is not sworn or alleged that the lands granted below the Raccoon Fork will not complete the
723 improvement authorized by that law, and, until that is done, there is no plea on which, in my opinion, the case could again be brought before Congress, much less allowed by the Executive. All which is most respectfully submitted.

With the highest respect, your obedient servant,

J. BUTTERFIELD,
Commissioner.

To the PRESIDENT.

724 XXVII. *Butterfield, Commissioner, to Secretary Stuart.*

GENERAL LAND OFFICE,
September 26th, 1850.

SIR: I have the honor to return the papers relative to the claim of the State of Iowa of the lands above the Raccoon Fork of the Des Moines River, under the act of the 8th August, 1846.

In this case an appeal was taken from the decision of this office, adverse to the claim, to the Secretary of the Interior. That officer sustained the decision of this office, and an appeal was then taken to the President, who referred the whole matter to the Attorney General for an opinion. That opinion was given on the 19th July last, and with the papers in the case handed to me by the President a few days ago, and I now beg leave to return them, with a review of the Attorney General's opinion for the final action of the President.

With great respect,

J. BUTTERFIELD,
Commissioner.

Hon. A. H. H. STEWART,
Secretary of the Interior.

725 XXVIII. *Jones, Dodge, Leffler, and Miller, (Iowa delegation in Congress,) to Secretary Stuart, Dec. 30th, 1850.*

WASHINGTON, *Dec.* 30, 1850.

Hon. A. H. H. STUART,
Secretary of the Interior.

SIR: In the matter of the Des Moines River grant, we contend, in the first place, that even if the construction put upon that grant by Mr. Walker were incorrect it is final and conclusive.

The lands granted were to be selected by agents to be appointed by the governor of Iowa, subject to the approval of the Secretary of the Treasury. They were so selected, and that selection approved by the Secretary.

The lands thus selected and approved comprised all the unsold odd sections lying on each side of the Des Moines River, from its source to its mouth, and which fell within the former Territory of Iowa.

The grant was conditional, requiring the assent of our legislature. It received that assent. It was a contract and was consummated when the selection of the land had received the approval of the Secretary of the Treasury. When so consummated neither party, by itself or its agent, had power to change it.

726 If a successor may rescind the acts of the Secretary, when will that power of recission cease? Could the Secretary of the Interior ten years hence have declared the acts of his predecessor illegal & directed the lands to be sold by the United States land officers long after they had been sold and patented by the State? The Supreme Court in the case of The United States vs. The Bank of the Metroplis, 15 Howard, page 401, has decided that:

"This right *is* an incumbent, if reviewing a predecessor's decisions, extends to mistakes in matters of fact arising from errors in calculation, and to cases of rejected claims, in which material testimony is afterwards discovered and produced."

We regard it as a well-settled rule that, where no appeal is given by statute, the first decision is final.

The general objection to all ex-post-facto regulations exist in full force in the present instance. Relying upon the decision of Mr. Walker, the State has made arrangements very different from those which would otherwise have been adopted. The improvements have been commenced, and contracts made for their prosecution, on a scale much greater

727 than would have been the case had a different construction been given to the law in the first instance. The State is, by her constitution, prohibited from incurring a debt, and the state of our finances will not permit appropriations from the annual revenues; much that has been done will therefore be valueless if we are *not* deprived of the means of completing the work. The loss thus liable to be sustained, might to a great extent have been prevented, had Mr. Walker's decision been as little in our favor as that of Mr. Ewing. The grant upon this narrow construction would therefore have been much more valuable to the State but for the act of an officer of the Federal Government acting within the scope of an agency specially conferred upon him by law.

But this is not all; many private individuals have, since the decision of Secretary Walker, and upon their faith in that decision, made contracts which must prove ruinous if Mr. Ewing's construction of the law is now enforced. They have engaged to construct large portions of the work, and have already expended considerable sums of money under an agreement to be paid from the proceeds of the unsold lands. Those

lying below the Raccoon Forks will not be sufficient to reimburse
728 them for these expenditures. They will thus be subjected to loss and perhaps ruin for having placed confidence in the language of the Federal Government expressed through its legally-constituted organ.

But, in the second place, we contend that Mr. Walker's was the correct construction of the act of 1846. What is there in that act to justify the conclusion that the land thereby granted does not extend above the Raccoon Forks?

The first section of that act, the only one material to this discussion, embraces two separate and distinct matters. It declares the purpose of the act and provides the means for its attainment.

The purpose is the improvement of the Des Moines River from its mouth to the Raccoon Forks, the means appropriated are one-half the unappropriated lands lying in a strip five miles in width on each side of the river. In making the appropriation, nothing is said of the Raccoon Forks, nor is there anything in the act which seems by a fair intendment to limit the land in that direction.

But, to place the meaning of the act beyond controversy, the legislature has declared that the lands are to be selected within the Terri-
729 tory of Iowa. Such a limitation is tantamount to extension coincident with the limits fixed.

The provision that a defendant cannot be sued out of the county or district in which he resides, is equivalent to a declaration that he may sued anywhere within that county or district.

The lands granted are limited by three conditions only. They must not have been previously appropriated. They must lie within five miles of the Des Moines River, and they must lie within the Territory of Iowa. That they are given for the purpose of improving that portion of the Des Moines River which lies below the Raccoon Forks, has no more to do with limiting the amount granted than though given for the improvement of the Mississippi Rapids or the construction of a railroad.

As a reason why this grant should extend above the Raccoon Fork, we adduce the fact that the lands on both sides of the Des Moines for nearly a hundred miles above its mouth had been sold and otherwise appropriated by the U. S. long before the passage of the law granting lands to Iowa for the improvement of this river.

730 One of the chief reasons for donations of this kind is that the remaining lands of the United States are enhanced in value and meet with readier sale in consequence of the improvement. Now by rendering the Des Moines River navigable to the Raccoon Forks the value of the lands far above that point will be greatly augmented as the stream in its natural condition is navigable a portion of the year for some distance higher up.

The improvement of the rapids in the Mississippi River, by means of donations of lands from the United States has been sometimes contemplated, but no one ever thought of limiting the donation to the tract opposite the rapids, as their improvement improves the whole river; and if for the purpose of effecting this improvement a grant were made of the lands lying in a strip five miles wide on each side of the Mississippi River to be selected within the States of Iowa & Illinois, would there be the least dispute or doubt as to the extent of the grant.

It has sometimes been urged that Congress never intended that the grant should extend higher up than the Raccoon Forks; but we deny that testimony can now be received to show the private intention of
731 the individual members of Congress on this subject, or to prove what particular facts were brought before that body or any

committee thereof to influence their action. We hold that you cannot look, in interpreting a statute, beyond the terms of the act itself and the particular historical circumstances out of which it grew, and

Second. That if you can, the evidence which the Commissioner of the General Land Office has furnished proves nothing. In the case of Aldridge et al. vs. Williams, 3rd Howard, page 24, the Supreme Court says: "In expounding this law the judgment of the court cannot in any degree be influenced by the construction placed upon it by individual members of Congress, in the debate which took place on its passage, nor by the motives or reasons assigned by them for supporting or opposing amendments that were offered. The law as it passed is the will of the majority of both houses, and the only mode in which that will is spoken is in the act itself."

Originally the Commissioner of the General Land Office decided that the State of Iowa was entitled to the alternate sections within "five miles of the Des Moines River throughout the whole extent of that river within the limits of Iowa." (See his letter to our board of internal improve-
732 ment, bearing date February 23, 1848.) He subsequently changed his opinion as to the extent of the grant, whereupon the undersigned upon the day of January, 1849, took an appeal to the then Secretary of the Treasury, (Hon. R. J. Walker,) who, on the second day of March, in the same year, decided after argument at great length, and with all the facts and documents before him, that the grant was co extensive with the Des Moines River. This decision in favor of our State was communicated by one of the undersigned (Mr. Jones) by telegraph on the third day of March, 1849, to the board of internal improvement, they having before them, and undecided, the question as to which of the several plans for the improvement of the river should be adopted. The news of Mr. Walker's decision decided them in favor of the most costly plan, and induced the immediate letting of the heavy contract before mentioned.

As evidence that Mr. Walker's letter to us was regarded as a decision, and not, as has been alleged, a mere opinion, we mention: 1st. The fact that a copy of it was communicated on the same day to the Commissioner of the General Land Office for his information & government.

733 2nd. That both the present Commissioner and his immediate predecessor reported it to Congress as a decision, for which see the several and printed documents accompanying the papers, and now on file.

3rd. The Commissioner reported it to the United States land officers in Iowa, and to the State officers as a decision, immediately on receipt of Mr. Walker's letter. (See his letter on file in his own office.)

4th. Under the decision of Mr. Walker the Commissioner caused permanent annotations to be made on the tract books of the lands above the Raccoon Forks as belonging to Iowa, a thing which is never done except in obedience to law.

5th. The present Commissioner always reported and spoke of Mr. Walker's action in this case as a decision. He did so in his letter to Mr. Ewing on the 13th day of March, 1850, and recommended to him to approve the selections above the mouth of Raccoon River in conformity with that decision.

All of which is respectfully submitted by, with high considerations of respect, your obedient servants,

GEO. W. JONES.
A. C. DODGE.
SHIP'D LEFFLER.
D. F. MILLER.

734 XXIX. *The board of public works to Butterfield, Commissioner, February 15th, 1851.*

OFFICE OF BOARD OF PUBLIC WORKS,
Ottumwa, Iowa, February 15, 1851.

SIR: The undersigned board of public works of the State of Iowa have been notified by our honorable Senators in Congress that the honorable Secretary of the Interior has intimated, in advance of a formal decision in relation to the extent of the grant of lands made to the Territory of Iowa by the act of Congress approved August 8, 1846, that a difficulty might arise against the construction put upon said act by the State authorities, growing out of the supposed fact that the agents appointed under the territorial government have not made the selection, required by the act, beyond the lands embraced in the diagram furnished by the General Land Office, and returned to the same by Jesse Williams, one of said agents.

The present board of public works, as well as their predecessors in office, have ever regarded the selection made by said agents as co-extensive with the grant, and as not limited by the diagram alluded to, which only embraced the lands contiguous to the Des Moines River then surveyed. The selection, in general terms, of the odd sections was supposed to apply to all lands embraced in said grant, as well those surveyed at the time, as those thereafter to be surveyed; nor has any formal selection of the lands since surveyed been deemed necessary. Both the former and present board of public works have sold lands not embraced in said diagram and lying below the mouth of Raccoon River, and lists of said lands have been furnished by the General Land Office, and confirmed by the Secretary of the Treasury, and yet no selections of these lands has been made beyond that of the territorial agents. To avoid, however, the difficulty suggested by the honorable Secretary of the Interior, but not admitting that a selection of said lands has not been made in accordance with said act, we, the undersigned, hereby notify the Commissioner of the General Land Office that we have selected all the lands within five miles of the river Des Moines that are embraced within the odd sections from the mouth of said river to the source of the same not embraced in the selection heretofore made by the territorial agents, as granted to the Territory of Iowa, to aid in the improvement of the navigation of the Des Moines River from its mouth to the Raccoon Fork, (so called,) in said Territory, by the act of Congress of the 8th of August, 1846.

We also request to be furnished, at as early a day as practicable, with a diagram and confirmed list of said lands lying above the Raccoon Forks, and as far up said river as the surveys have been completed.

We are, with high respect, your obedient servants,

WILLIAM PATTERSON, *President.*
JESSE WILLIAMS, *Secretary.*
GEORGE GILLASPY, *Treasurer.*

Hon. J. BUTTERFIELD,
Commissioner of General Land Office, Washington City, D. C.

SENATE, *March* 10, 1851.

A. C. DODGE: Enclosed communication from the board of internal improvement of the State of Iowa. Reselect the odd-numbered sections throughout the whole extent of the grant of land made to the State of Iowa by act of 8th August, 1846.

XXX. *The board of public works to Secretary Stewart, Feb. 22d, 1851.*

KEOKUK, *February 22d*, 1851.

To Hon. ALEX. STUART:

As agents of the State of Iowa, we demand all the odd sections of land within five miles of the Des Moines River, above Raccoon Forks, for improvement of said river, as provided by the act of Congress upon that subject.

W'M PATTERSON,
President Board of Public Works.
J. WILLIAMS, *Secretary.*

735 XXXI. *Commissioner Butterfield to Secretary Stewart, March 11th, 1851.*

GENERAL LAND OFFICE, *March 11th*, 1851.

SIR: In letter of the first instant the Senators from Iowa transmitted the following telegraphic despatch, which has been referred by you to this office, to wit:

"KEOKUK, *Feb'y 22d*, 1851.

"For Hon. ALEX. STEWART:

"As agents of the State of Iowa, we demand all the odd sections of land within five miles of the Des Moines River, above Raccoon Fork, for improvement of said river, as provided by the act of Congress upon that subject.

"W. PATTERSON,
"*Pres't Board Pub. Works.*
"J. WILLIAMS, *Secretary.*"

I have the honor to submit for your consideration and decision the selections thus made, the particular tracks, so far as the surveys have been made, being set forth in list No. 1, with the papers in your office, and, in connection therewith, beg leave to refer to the communications from this office of 13th June and 26th Sept., 1850, relative to the
736 right of the State to make selections above the Raccoon Fork, which are on file with the papers in the case, and which I request may be considered as part of this communication.

The letter from the Senators from Iowa enclosed.

With great respect, your obedient servant,
J. BUTTERFIELD, *Commissioner.*

Hon. A. H. H. STUART,
Secretary of the Interior.

737 XXXIII. *Secretary Stuart to the Commissioner of the General Land Office, July 26th, 1851.*

DEPARTMENT OF THE INTERIOR,
Washington, July 26, 1851.

SIR: Enclosed I send you a copy of an opinion of the Attorney General, dated the 30th ultimo, in which I concur, relative to the claim of the State of Iowa, under the act of 8th August, 1846, to alternate sections of land along the Des Moines River, above Raccoon Forks, together with all the papers in the case.

The order of Mr. Secretary Ewing of the 6th April, 1850, for the with-

holding of these lands from market until the close of the then present session of Congress, may be continued until the end of the approaching session, in order to give the State the opportunity of petitioning for an extension of the grant by law.

I am, sir, very respectfully, your obedient servant,

ALEX. H. H. STUART, *Secretary.*

The COMMISSIONER OF THE GENERAL LAND OFFICE.

738 XXXIV. *Secretary Stuart to the Commissioner of the General Land Office, Oct. 29th, 1851.*

(Printed in Exhibit VII to plaintiff's bill. Transcript p. 65; this record p. 50.)

XXXV. *Secretary Stuart to the Commissioner of the General Land Office, Oct. 30th, 1851.*

DEPARTMENT OF THE INTERIOR,
Washington, Oct. 30th, 1851.

SIR: I herewith return you the lists, one, two, and three, of lands in the odd-numbered sections above Raccoon Fork, falling within the grant to the State of Iowa under the act of 8th of August, 1846, which you submitted to-day in pursuance of my directions of 29th instant, with my approval of the selections embraced in list No. 3, endorsed thereon.

I am, sir, very respectfully, your obedient servant,

ALEX'R H. H. STUART.

COMMISSIONER OF THE GENERAL LAND OFFICE.

739 XXXVI. *Commissioner Butterfield to Van Antwerp, Nov. 1st, 1851.*

GENERAL LAND OFFICE,
November 1st, 1851.

To V. P. Van Antwerp, esq., present.

SIR: In compliance with the request contained in your letter of this date, to be furnished with lists approved by the Secretary of the Interior, of the lands granted to the State of Iowa by the act of Congress of the 8th of August, 1846, or such portion of them as can now be prepared, I herewith enclose certified copies numbered 1, 2 & 3 of said lists.

No. 1 shows the odd-numbered sections and parts of sections within the limits of the Des Moines River grant above the Raccoon Fork, in the townships embraced in said list.

No. 2 shows the tracts sold within the above-mentioned sections and parts of sections between the 24th of August, 1848, and the 16th of June, 1849, the period during which the grant was supposed to be limited on the north by the Raccoon Fork.

No. 3 shows the residuary or vacant tracts, after deducting from list No. 1, the sales contained in list No. 2, and is an exhibit, therefore, of the lands accruing to the State in virtue of the grant, not interfered with by previous sales.

You will perceive that list No. 3, only, has been approved by the Secretary.

Very respectfully, your obedient servant,

J. BUTTERFIELD,
Commissioner.

XXXVII. *Commissioner Butterfield to the register at Dubuque, March 16th, 1852.*

GENERAL LAND OFFICE, *March* 16, 1852.

REGISTER, *Dubuque, Iowa.*

SIR: I herewith transmit an exemplified copy of a list showing the vacant lands in the odd-numbered sections above the Raccoon Forks, and within five miles of the Des Moines River, so far as the surveys have progressed, falling to the State of Iowa, under act of 8th August, 1846, as construed by the Secretary of the Treasury, in his letter of 2d of March, 1849, and the Secretary of the Interior, of 29th October, 1852, approved by the Secretary of the Interior, on the 10th inst., a copy of which has been sent to George Gillapsy, esq., register, &c.

I am, very respectfully, your obedient servant,

J. BUTTERFIELD,
Commissioner.

740 XXXVIII. *Caption of a list of lands approved to the State of Iowa, by Secretary Stuart, March 10th, 1852.*

A list showing the vacant lands in odd-numbered sections above the Raccoon Forks, and within five miles of the Des Moines River, so far as the surveys have progressed, falling to the State of Iowa, under the act of 8th of August, 1846, as construed by the Secretary of the Treasury, in his letter of the 2nd March, 1849, and of the Secretary of the Interior of the 29th of October, 1851, which have not heretofore been approved.

741 XXXIX. *Commissioner Butterfield to Gillaspy, register, &c., March 16th, 1852.*

GENERAL LAND OFFICE,
March 16th, 1852.

SIR: In compliance with the request made in your letter of 5th February last, I herewith transmit an exemplified copy of a list showing the vacant lands, in the odd-numbered sections above the Raccoon Forks, and within five miles of the Des Moines River, so far as the surveys have progressed, falling to the State of Iowa, under the act of 8th August, 1846, as construed by the Secretary of the Treasury, in his letter of 2nd March, 1849, and of the Secretary of the Interior of 29th October, 1851, approved by the Secretary of the Interior on the 10th inst.

I am, very respectfully, your obedient servant,

J. BUTTERFIELD,
Commissioner.

GEORGE GILLASPY, Esq.,
Register, &c., Ottumwa, Iowa.

XL. *Commissioner Butterfield to the register at Iowa City, April 20th, 1852.*

GENERAL LAND OFFICE,
April 20th, 1852.

REGISTER, *Iowa City, Iowa.*

SIR: I herewith transmit a list showing the vacant lands in the Iowa City district, in the odd-numbered sections above the Raccoon Forks, and within five miles of the Des Moines River, so far as the surveys have progressed, falling to the State of Iowa under the act of 8th August,

1846, as construed by the Secretary of the Treasury, in his letter 2d March, 1849, and of the Secretary of the Interior, of 29th October, 1851; which have not heretofore been approved. Complete lists approved by the Secretary of the Interior, 10th March, were transmitted to the State register and to the register of land office at Dubuque, on the 16th ultimo.

I am, very respectfully, your obedient servant,

J. BUTTERFIELD,
Commissioner.

742 XLI. *Secretary Stuart to the Acting Commissioner of the General Land Office, August 23d, 1852.*

(Printed in Exhibit VII to plaintiff's bill. Transcript, p. 68; this record, p. 52.)

XLII. *Extracts from proclamation No. 488.—Sales of public lands, February 1st, 1853.*

743 By the President of the United States.

In pursuance of law, I, Millard Fillmore, President of the United States of America, do hereby declare and make known that public sales will be held at the undermentioned land offices in the State of Iowa, at the periods hereinafter designated, to wit:

* * * * * * * *

At the land office at Fort Des Moines, commencing on Monday, the thirteenth day of June next, for the disposal of the public lands within the limits of the undermentioned townships and parts of townships, to wit:

North of the base line and west of the fifth principal meridian:

Townships ninety-two and ninety-four, of range seventeen; townships ninety-two, ninety-three, and ninety-four, of range eighteen; townships ninety-one, ninety-two, and ninety-four, of range nineteen; townships ninety-one, ninety-two, of range twenty; township ninety-one of range twenty-two; townships eighty-nine, ninety, ninety one, ninety-
744 two, and ninety-three, of range twenty-three; township' ninety-one and ninety-two, of range twenty-five; sections two, four, six, eight, ten, fourteen, eighteen, twenty, twenty-two, the east half of the southeast quarter, and the southeast quarter of the northeast quarter of twenty-three; twenty-six, twenty-eight, thirty, thirty-two, thirty-four, and thirty-six, in township eighty-four; the east half, the northeast quarter of the northwest quarter of section three, four, six, eight, ten, the east half and the northwest quarter of the northeast quarter, and the northeast quarter of the southeast quarter of fifteen, eighteen, twenty, and twenty-two, the east half and the east half of the northwest quarter of twenty-three, twenty-six, twenty-eight, thirty, thirty-two, thirty-four, and the east half of the northeast quarter, and the east half of the southeast quarter of thirty-five, (35,) in township eighty-five; sections four, six, eight, ten, fourteen, eighteen, twenty, twenty-two, the north-
745 east quarter and the east half of the southeast quarter of twenty-three, twenty-six, twenty-eight, thirty, thirty-two, and thirty-four, in township eighty-seven; sections twenty-nine, (except the southwest quarter of the southwest quarter,) thirty, and thirty-two, in township eighty-eight; and township eighty-nine, ninety, ninety-one, and ninety-two, of range twenty-six.

Sections two, the west half and the west half of the southeast quar-

ter of eleven, twelve, the west half of the southwest quarter of thirteen, fourteen, twenty-four, and the west half and southeast quarter, and the west half of the northeast quarter of twenty-five, in township eighty-one; sections two, four, the west half and west half of the southeast quarter of nine, ten, twelve, fourteen, twenty-two, twenty-four, twenty-six, twenty-seven, (except the northeast quarter of the northeast quarter,) the west half of the northwest quarter, and west half of the southwest quarter of thirty-five, and section thirty-six, in township eighty-two; and sections two, four, six, eight, ten, twelve, fourteen, eighteen, twenty, twenty-two, twenty-four, twenty-six, twenty-eight,
twenty-nine, (except the northeast quarter of the northeast quar-
746 ter,) the west half of thirty-three, thirty-four, and thirty-six, in township eighty-three; all the sections and fractional sections bearing even numbers in fractional townships eighty-four, eighty-five, eighty-six, and eighty-seven; the east half, the east half and the northwest quarter of the northwest quarter, and the east of the southeast quarter of section three, sections four, six, eight, and ten, the east half of the northeast quarter, and the east half of the southeast quarter of fifteen, eighteen, twenty, and twenty-two, the north half of the northwest quarter, and the north half of the northeast quarter of twenty-three, and sections twenty-four, twenty-six, twenty-eight, thirty, thirty-two, thirty-four, and thirty-six, in township eighty-eight; and sections one to fifteen, inclusive, eighteen, the east half of the northeast quarter of nineteen, twenty, the north half and the southeast quarter, and north half of the southwest quarter of twenty-one, twenty-two to twenty-six inclusive, the northeast quarter, the north half of the northwest quarter, and the northeast quarter of the southeast quarter
747 of twenty-seven, twenty-eight, thirty, thirty-two, thirty-four, the northeast quarter, the east half of the southeast quarter, and the northeast quarter of the northeast quarter of thirty-five, and thirty-six, in township eighty-nine; the whole of township ninety; township ninety-one, (except sections five and seven, and the west half of the northwest quarter of thirty-one,) and sections five, seven, nine, the west half of the northwest quarter of fifteen, seventeen, nineteen, twenty-one, twenty-nine, and thirty-one, in township ninety-two, of range twenty-seven.

At the same place, commencing on Monday, the eleventh day of July next, for the disposal of the public lands within the undermentioned townships and parts of townships, to wit:

North of the base line and west of the fourth principal meridian:

The west half of the northwest quarter, and the west half and southeast quarter of the southwest quarter of section one, and section twelve, in township eighty-three; section two, the west half and the southeast
quarter, and the west half of the northeast quarter of eleven,
748 twelve, the west half of the northwest quarter, and the west half of the southwest quarter of thirteen, twenty-four, and thirty-six, in township eighty-four; section two, the west half of section eleven, fourteen; the west half, the west half of the northeast quarter, and the northwest quarter of the southeast quarter of twenty-three; twenty-four, twenty-six; the west half of thirty-five, and thirty-six, in township eighty-five; section two, the west half and the southeast quarter of the southwest quarter of three, ten, twelve, fourteen, the west half, the west half of the northeast quarter, and the west half of the southeast quarter of fifteen, twenty-two, twenty-four, twenty-six, the west half of the northeast quarter, and the west half of the southeast quarter of

twenty-seven, and thirty-six, in township eighty-six; sections two, four, six, eight, ten, twelve, fourteen, eighteen, twenty, twenty-two, twenty-four, twenty-six, twenty-eight; the west half, the west half and southeast quarter of the southeast quarter, and the southwest quarter of the northeast of twenty-nine, the southwest quarter, the west half, and the southeast quarter of the northwest quarter, and the southwest quarter of the southeast quarter of thirty-three, thirty-four, and thirty-six, in township eighty-seven; all the sections bearing even num-
749 bers in township eighty-eight; the north half and the southeast quarter of the northeast quarter, and the east half of the southeast quarter of section one, sections two, four, six, (the part east of the river,) eight, ten, twelve, the east half and the northeast quarter of thirteen, fourteen, eighteen, (the part east of the river,) twenty, twenty-two, twenty-four, twenty-six, twenty-eight, thirty, and thirty-two, (the part east of the river,) thirty-four, and thirty-six, in township eighty-nine; the east half of the southeast quarter of section one, two, four, six, (the part east of the river,) eight, ten, twelve, the south half and the northeast quarter, and the east half of the northwest quarter of thirteen, fourteen, eighteen, twenty, twenty-two, twenty-four, the east half, the east half and northwest quarter of the northwest quarter, and the east half of the southwest quarter of twenty-five, twenty-six, twenty-eight, thirty, (the part east of the river,) thirty-two, thirty-four, and thirty-six, in township ninety; sections two, four, six, eight, (the part east of the river,) ten, twelve, fourteen, eighteen, (the part east of the river,) twenty, twenty-two, twenty-four, twenty-six, twenty-eight, thirty, and thirty-two, (east of the
750 river,) thirty-four, and thirty-six, in township ninety-one; sections one, three, (the part east of the river,) eleven, (east of the river,) thirteen, fifteen, (east of the river,) twenty-three, twenty-five, twenty-seven, (east of the river,) thirty-one, (east of the river,) thirty-three, (east of the river,) and thirty-five, in township ninety-two, of range twenty-eight. Townships eighty, eighty-one, eighty-two, eighty-three, section twelve, (east of the river,) in township eighty-nine, and section twelve and twenty-four, (east of the river,) in township ninety, of range twenty-nine. Township eighty-one, eighty-two, and eighty-three, of range thirty. Township eighty-one, eighty-two, and eighty-three, of range thirty-one. Townships seventy-six, seventy-seven, eighty-two, and eighty-three, of range thirty-two. Townships seventy-six, seventy-seven, seventy-eight, seventy-nine, eighty, eighty-two, and eighty-three, of range thirty-three.

* * * * * * * * *

Lands appropriated by law for the use of schools, military, and
751 and other purposes, together with "those swamp and overflowed lands made unfit thereby for cultivation," if any which shall be selected by the State authorities before the days appointed for the commencement of the public sales respectively, under the act entitled "An act to enable the State of Arkansas and other States to reclaim the swamp lands within their limits," approved September 28th, 1850, will be excluded from the sales.

The offering of the lands will be commenced on the days appointed, and will proceed in the order in which they are advertised with all convenient dispatch, until the whole shall have been offered, and the sales thus closed; but no sale shall be kept open longer than two weeks, and no private entry of any of the lands will be admitted until after expiration of two weeks.

Given under my hand at the city of Washington this first day of February, anno Domini one thousand eight hundred and fifty-three.

MILLARD FILLMORE.

By the President:

JOHN WILSON,
Commissioner of the General Land Office.

752 Notice to pre-emption claimants.

Every person entitled to the right of pre-emption to any of the lands within the townships and fractional townships above mentioned, is required to establish the same to the satisfaction of the register and receiver of the proper land office, and make payment therefor as soon as practicable after seeing this notice, and before the day appointed for the commencement of the public sale of the lands embracing the tract claimed; otherwise such claim will be forfeited.

JOHN WILSON,
Commissioner of the General Land Office.

753 XLIII. *Acting Commissioner Frailey to Gillaspy, Dec'r 2nd, 1853.*

GENERAL LAND OFFICE, *December 2nd*, 1853.

SIR: Assisted by the information contained in your letter of the 7th ult., I have ascertained that there are a number of tracts of land selected by the State of Iowa under the 8th section of the act of 4th September, 1841, situated within the limits of the Des Moines River grant, under which (the grant) the State is entitled to them, and you are advised that when the grant is adjusted which will be in a short time, so far as the surveys have progressed, the approval of the selections so situated will be rescinded and the State be authorized to select others in lieu thereof.

You are again advised that the books and files of this office show no military reservation on section 19, 89 N., 28 W., and upon enquiry at the War Department it appears that there has never been any order to reserve it. It will therefore be certified to the State under the Des Moines grant.

I am, very respectfully, your obedient servant,

CHA'S S. FRAILEY,
Acting Commissioner.

GEO. GILLASPY, Esq.,
Ottumwa, Iowa.

754 XLIV. *Commissioner Wilson to Gillaspy, register, &c., January 6th*, 1854.

GENERAL LAND OFFICE, *January 6th*, 1854.

SIR: Herewith I enclose a certified copy of a list of lands falling within the Des Moines River grant under act of 8th August, 1846, selected by the State of Iowa under the 8th section of the act of the 4th September, 1841, on the 20th July, 1850, and erroneously approved the 20th February, 1851, previous to the adjustment of the grant, and before it was known that they belonged to the State under the Des Moines River grant, now approved by the Secretary of the Interior, under the act of 8th August, 1846. The quantity of land embraced by the list is twelve thousand eight hundred and thirteen acres and fifty-one hundredths of an acre, (12,813.51.)

Tho's H. Benton, j'r, esq., superintendent of public instruction, has been advised that the State is authorized to select an equal quantity under the act of 1841 in lieu thereof.

I am, very respectfully, your obedient servant,

JOHN WILSON,
Commissioner.

GEORGE GILLASPY, Esq.,
Register State Land Office, Ottumwa, Iowa.

755 XLV. *Commissioner Wilson to Benton, superintendent, &c., January 6th*, 1854.

(Printed in Exhibit VII of plaintiff's bill. Transcript p. 68; this record, 52.)

XLVI. *Commissioner Wilson to Gillaspy, register, &c.*

GENERAL LAND OFFICE, *January 6th*, 1854.

SIR: Herewith I enclose a certified copy of a list of tracts falling to the State of Iowa under the act of the 8th August, 1846, above the Raccoon Forks, so called, so far as the surveys have progressed, and not heretofore approved, approved by the Secretary of the Interior on the 17th ultimo, amounting in the aggregate to thirty-three thousand one hundred and forty-two acres and forty-three hundredths of an acre ($33,142\frac{43}{100}$.)

I am, very respectfully, your obedient servant,

JOHN WILSON,
Commissioner.

GEO. GILLASPY, Esq.,
Register of State Land Office, Ottumwa, Iowa.

XLVII. *Commissioner Wilson to the register at Fort Des Moines, Jan. 7th*, 1854.

GENERAL LAND OFFICE, *January 7th*, 1854.

SIR: I enclose a copy of a list of the vacant lands in the odd-numbered sections above the Raccoon Forks, and within five miles of the Des Moines River, so far as the surveys have progressed, falling to the State of Iowa, under the act of 8th August, 1846, as construed by the Secretary of the Treasury, in his letter of 2nd March, 1849, and of the Secretary of the Interior, of the 29th October, 1851, approved by the Secretary of the Interior on the 17th ultimo.

The *quality* embraced by the list is 33,142. 43 acres.

You will please have them entered upon your tract and plat books.

I also enclose a copy of a list of lands falling within the Des Moines River grant, under act of 8th August, 1846, selected by the State under the 8th section of the act of the 4th September, 1841, on the 20th July, 1850, and erroneously approved on the 20th February, 1851, previous to the adjustment of the grant for those townships, and before it was known that they belonged to the State under the Des Moines River grant.

This list was approved on the 30th ult. and embraced 12,813. 51 acres.

You will please note these selections upon your plat and tract books,

as approved under act of 8th August, 1846 and cancel the approval of the same as selections under the act of 4th September, 1841.

I am, very respectfully, your obedient servant,

JOHN WILSON,
Commissioner.

REGISTER OF THE LAND OFFICE,
Fort Des Moines, Iowa.

756 XLVIII. *Telegram of Commissioner Hendricks to the registers and receivers at Council Bluffs, Dubuque, Chariton, and Fort Des Moines, May 10th, 1856.*

GENERAL LAND OFFICE, *May* 10, 1856.

You will suspend, from sale or location, all the lands in your district until further orders.

Acknowledge the receipt of this dispatch by telegram and mail.

THO'S A. HENDRICKS,
Commissioner.

REGISTERS AND RECEIVERS,
Council Bluffs, Iowa.
Dubuque, "
Chariton, "
Fort Des Moines, "

XLIX. *Commissioner Hendricks to Jones, Senator, May 12th, 1856.*

GENERAL LAND OFFICE, *May 12th*, 1856.

Hon. GEO. W. JONES,
U. S. Senate.

SIR: In reply to the inquiries in your letter received this morning, I have to state, according to a hasty estimate at this office—

1st. That the lands along the Illinois Central Railroad were offered between the years 1816 and 1844, embracing a period of 28 years. Assuming 14 years as the average, and adding 12, the term elapsed since 1844, we have the average term the lands have been in market, 26 years; hence the price under the graduation act would be 25 cents per acre.

2d. See enclosed printed statement in commissioner's annual report of November 30, 1854, pages 17 and 18, which shows as follows:

Sold within six-mile limits, 765,690 acres for $1,936,075, average price $2 54 per acre. Sold within fifteen miles, including the above, 2,377,994 acres for $3,989,210, average price $1 68 per acre.

3d. The enclosed statement marked "A" shows the estimated length of the railroads and the amount which would accrue to the State under the bill.

I am, respectfully, your obedient servant,

THO'S A. HENDRICKS,
Commissioner.

757 Statement "A" referred to in the foregoing letter.

"A."—IOWA RAILROAD GRANTS.

Routes.	Estimated miles.	Granted.
Dubuque via Fort Dodge to Sioux City	295	1,132,800
Lyons City, via Maquoketa due west to Missouri River	325	1,248,000

Davenport, via Iowa City, Fort Des Moines, to Council Bluffs	290	1,113,600
Burlington, west, to mouth of La Platte River	255	979,200
Total	1,165	4,473,600
Deduct for Des Moines River grant, which crosses 4 times 10x4	40	153,600
Leaves	1,125	4,320,000

quantity to which the State would be entitled if to be had within the alternate sections within fifteen miles of the road.

Whole surface of Iowa is	32,584,960 acres.	
Estimated vacant 30th September, 1855	13,804,163 "	
Amount that would be liable for selection, if the lands were all vacant, 1,125x15 x 640 acres		10,800,000
Therefore, as 32 : 13 :: 10,800,000		4,387,500

The estimated amount vacant and liable to selection for the grant within the prescribed limits, and equal to the quantity granted. But the deficiency on one route cannot be made up on another; it is not possible, therefore, that the lands will hold out.

758 L. *Commissioner Hendricks to the register and receiver at Fort Des Moines, May 15th, 1856.*

GENERAL LAND OFFICE, *May 15th*, 1856.

REGISTER AND RECEIVER,
F't Des Moines, Iowa.

GENTLEMEN: By my telegraph dispatch of the 10th ins't, you were directed to suspend from sale or location all the lands in your district until further orders. The object of this withdrawal was to protect from sale the lands granted to the State of Iowa for four railroads running from the Mississippi River to the Missouri, by a bill which had passed both Houses of Congress.

Said bill, having this day been approved by the President, has become a law, and you will continue to withhold from sale or location until otherwise directed.

It is designed to adjust these several grants with as little delay as practicable, in order that the lands remaining to the United States may be restored to market.

I am, very respectfully, your obedient servant,

THO'S A. HENDRICKS,
Commissioner.

759 La. *Report of the Chairman of the Committee on Public Lands of the House, May 28, '56.*

GENERAL LAND OFFICE, *May 28*, 1856.

This is to certify that, in the report from this office to the Committee on Public Lands of the House, on which was based the bill No. 17, approved May 15, 1856, granting lands to Iowa, for certain railroads, the estimates of the land which would be conveyed by the said bill were founded on the construction of the Des Moines River grant, to the effect that that grant extended to the source of the Des Moines River, and the alternate sections in a strip five miles in width on each side of the

Des Moines River, above as well as below the Raccoon Fork, were reported as excluded from the amount of land that would pass by that bill, and reserved from its operation.

A. R. PARKER,
Draughtsman Ho. Rep's.

HOUSE OF REPRESENTATIVES, *May* 28, 1856.

The above statement of Mr. Parker is correct.

H. BENNETT,
Chairman House Committee on Public Lands.

760 LI. *Articles of incorporation of Des Moines Navigation and Railroad Company, Dec. 6th*, 1854.

Articles of incorporation under the code of Iowa. Certificate of incorporation of the Des Moines Navigation and Railroad Company joined under the code of Iowa, May 6th, 1854.

In pursuance of the provisions of chapter forty-three of title ten (10) of the code of Iowa, entitled "Corporations for pecuniary profit," approved Feb. 5th, 1851, the undersigned and their associates adopt the following articles of incorporation, to wit:

1st. The principal object and business of the corporation hereby intended is to improve the navigation of the Des Moines River by means of dams and locks and canals, and otherwise as may be found expedient and proper to effect the object, and to construct railroads connected with or separate from the same, as may be found desirable.

2nd. The corporate name shall be "The Des Moines Navigation and Railroad Company."

3rd. The capital stock of the company shall be three millions of dollars; its principal place of transacting business shall be Ottumwa, with an office, if necessary, at Keokuk and Fort Des Moines and New York, or either, as notice shall be given. The shares of stock representing the said capital and the corporate property of the said company to be one hundred dollars each, transferable as provided in the by-laws of said company—five per cent. to be paid on subscription and subject to calls from time to time as may be necessary in transacting the business of said company.

4th. The corporation to commence on the sixth day of May, A. D. 1854, and to continue for fifty years from that date unless sooner dissolved under and in pursuance of the laws of the State of Iowa.

5th. The highest amount of indebtedness or liability which said corporation shall at any time subject itself shall not exceed two millions of dollars.

6th. The private property of stockholders or members of the corporation shall not be liable for a corporate debts.

7th. The officers or persons who shall conduct the affairs of the company shall be the president and board of directors of said company.

8th. The directors shall consist of nine persons. The first directors shall hold their offices respectively for one year from the first day of July, 1854, after which time they shall be elected by the stockholders annually.

9th. In case of resignation or death of any director or of any vacancy from other causes, the remaining directors shall fill the vacancy for the remainder of the term.

10. The president and secretary to be designated by the board of directors and to hold the said offices during the term of office of a director.

Dated May 6th, 1854.

EDWIN C. LITCHFIELD.
PORTER KIBBEE.
ORVILLE CLARK.
B. R. WHITMORE.
HENRY O'REILLY.
A. HUNT.
ELISHA C. LITCHFIELD.
HENRY TEN EYCK.
JOHN STRYKER.
NELSON B. STEWART.
E. B. LITCHFIELD.

The above articles of incorporation was filed for record May 19th, 1854, at 9 o'clock a. m. and was duly recorded same day.

JAMES POMEROY, *Recorder.*
By CHA'S HICKENLOOPER, *Deputy.*

STATE OF IOWA, *Wapello County, ss:*

I hereby certify that I have compared the annexed copy of a certificate of incorporation of the Des Moines Navigation and Railroad Company with the original record of the same remaining in the office of the recorder of said county, and that the same is a correct transcript therefrom, and of the whole of said original record.

In testimony whereof I have caused the seal of the county court of said county, to be hereunto affixed this thirteenth day of January, A. D. 1868.

JOSEPH N. CAMPBELL,
Clerk of District Court.

The Des Moines Navigation and Railroad Company, a corporation organized May 15th, 1854, under the laws of Iowa, hereby gives notice that, on the 10th day of January, 1858, its principal place of transacting business will be removed from Ottumwa, in Wapello County, to Des Moines, Polk County, Iowa.

761 Dated Ottumwa, the 3rd day of December, 1857.

ROSWELL S. BURROWS,
Pres. D. N. & R. R. Co.

No. 16—4w.

STATE OF IOWA, *Wapello County, ss:*

Green D. R. Boyd, of said county, being duly sworn, doth depose and say that he is is the publisher and proprietor of a weekly newspaper called the "Democratic Statesman," published in the city of Ottumwa, in said county, and that a notice, of which the above is a copy, has been published in said "Democratic Statesman" for four weeks in succession, commencing on the eleventh day of December, A. D. 1857, and ending on the 8th day of January, A. D. 1858.

G. D. R. BOYD.

Sworn to before me the 13th day of January, A. D. 1858.

JOSEPH N. CAMPBELL,
Clerk of District Court.

The Des Moines Navigation and Railroad Company, a corporation organized the 6th day of May, 1854, under the laws of Iowa, hereby gives notice that, on the tenth day of January, 1858, its principal place

of transacting business will be removed from Ottumwa, in Wapello County, to Des Moines, in Polk County, Iowa.

Dated at Ottumwa, the 3rd day of December, 1857.

ROSWELL S. BURROWS,
Pres. D. N. & R. R. Company.

Dec. 9th—4 w.

STATE OF IOWA, *Polk County, ss:*

John Teesdale, of said county, being sworn, doth depose and say that he is the publisher and proprietor of a weekly newspaper called "The Weekly Iowa Citizen," published in the city of Des Moines, in said county, and that a notice, of which the above is a copy, has been published in said newspaper for four weeks in succession, commencing on the 9th day of January, A. D. 1858.

J. TEESDALE.

Subscribed and sworn to before me the 18th day of January, 1858.

[SEAL.] JAMES E. HULL,
Notary Public.

STATE OF IOWA, *Polk County, ss:*

The foregoing instrument was filed for record on the 18th day of January, A. D. 1858, at 4 o'clock p. m., and recorded the 19th day of the same month.

SAMUEL M. DYER,
Recorder Polk County.
P'r B. D. THOMAS.

STATE OF IOWA, *Polk County, ss:*

I hereby certify that I have compared the above and foregoing certificate of incorporation of the Des Moines Navigation and Railroad Company, and other matters appended thereto, of record of the same remaining in the office of the recorder of Polk County, Iowa, book L, page 399, and that the same is a correct transcript therefrom, and of the whole of said original record.

Witness my hand this 1st day of May, A. D. 1869.

I. N. THOMAS,
Recorder Polk County, Iowa.

[Rev. stamp, 5 cents.]

762 LII. *Contract between State of Iowa and Des Moines Navigation and Railroad Company, June 9th, 1854.*

Articles of agreement made and entered into this ninth day of June, 1854, by and between The Des Moines Navigation and Railroad Company, (a corporation formed under the laws of the State of Iowa,) party of the first part, and the State of Iowa, by Josiah H. Bonney, commissioner of the Des Moines River improvement, by and with the consent and approval of Uriah Biggs and George G. Wright, assistant commissioners in the State of Iowa, for and in behalf of said State of Iowa, party of the second part, witnesseth:

That whereas the commissioners before named have heretofore entered into an agreement with Henry O'Reilly, bearing date the 17th day of December, eighteen hundred and fifty-three, and an additional and explanatory agreement, dated April 18th, 1854, for the completion of

the Des Moines River improvement, and which said agreements, contracts, and all rights of said Henry O'Reilly, by and with the consent and approval of both parties thereto, have been assigned and transferred to and for the benefit of the Des Moines Navigation and Railroad Company, and in pursuance of a stipulation of the said party of the second part, made simultaneously with said agreements, and to carry the same fully into effect:

The said parties for the purpose of simplifying and more fully explaining the said contracts and agreements, the said Des Moines Navigation and Railroad Company of the first part, and Josiah H. Bonney, commissioner, with the consent and approval of Uriah Biggs and Geo. G. Wright, assistant commissioners, of the second part, hereby enter into the following agreement:

First. The said party of the first part doth hereby covenant and agree to and with the party of the second part for the consideration hereinafter named, to make and finish the Des Moines River improvement from the Mississippi River to Raccoon Forks, on said Des Moines River, the said improvement to be made according to the plans and specifications of the engineer of said improvement heretofore made and determined upon, as to the style, character, and quality of work, from the town St. Francisville, on said river, to said Raccoon Forks, except that the said party of the first part may improve the style and character of the work, and enlarge the size of the locks, as hereinafter provided; and, so far as relates to the said work below the said town of St. Francisville, the same shall be done and completed upon such plan as may be determined upon by the engineer employed on said work, in connection with W'm J. McAlpine, late State engineer of the State of New York, as consulting engineer, as the said party of the first part shall select for that purpose; provided that all said work shall be done and completed in a substantial manner, so as to secure the navigation of said river to the fullest extent, and for the longest period each year practicable; and, provided further, that the said party of the first part shall not be required to expend below the said town of St. Francisville, in said improvement, more than the sum of three hundred thousand dollars; and provided, also, that during the progress of the work the said party of the first part, their successors and representatives, by and with the consent of the engineers in charge of the work, may alter or change the character and style of the work, or location of either of the locks, dams, or canals, or all of them, or any part thereof; provided no changes shall be made authorizing an inferior kind of work, or the use of less valuable materials, or lessening the capacity of said locks, or of any piece of canal necessary for the use of any of said locks, or diminishing in usefulness or value the said general improvement; and in case of any disagreement between the engineer in charge of said work and the party of the first part, or their successors, in reference to the proposed sites or locations or modes of constructing the locks, dams, or otherwise, the matters of difference shall be submitted for arbitration to the consulting engineer, or to other persons, to be agreed upon by both parties to this contract, whose decision upon the points submitted shall be conclusive upon all parties.

Second. The said party of the first part further agrees to and with the said party of the second part, to complete all said work from the Mississippi River to said Raccoon Forks, on or before the first day of July, 1858; and in like manner undertakes and covenants to complete at least one-fourth part of said work, each and every year, commencing on the first day of July, 1854.

Third. The said party of the first part doth further agree and covenant

with the said party of the second part, to pay and discharge any and all debts of every kind and description outstanding against the said Des Moines River improvement, on the 23d day of December last, within ninety days from the date of this contract; provided that the
763 whole amount of said debts shall not exceed the sum of sixty thousand dollars, and to meet and discharge said liabilities, the said Des Moines Navigation and Railroad Company have deposited with and paid over to the said Josiah H. Bonney, commissioner, the sum of fifty-five thousand dollars; and it is hereby agreed that the said party of the first part shall have, and is hereby entitled to all moneys due and owing to said improvement from the General Government, and all claims and demands against the said General Government, and all sums of money due from any other source, as also all sums of money now in the hands of said register, or that were in his hands on the 17th day of December last, or that may have been received by him, or have been in his hands on account of said improvement, at any time since the said 17th day of December, 1853; and the said sums of money in the said register's hands, on the 17th day of December, or that may have been in his hands at any time since, may be applied to the payment of any portion of the above-named debts, or for any debts incurred since the 17th day of December, in prosecuting the said improvement, and shall be by said register accounted for, to the said Des Moines Navigation and Railroad Company.

Fourth. All claims by mill owners or other persons for damages or rights of way, or other necessary privileges, in the prosecution of said work, as well as other claims for damages, shall be settled for by the said party of the first part, and on such terms as they may deem best; and the title to all such rights of way so procured, shall be taken and vest in the State of Iowa, subject to the right of the party of the first part therein, as in this contract mentioned; and all work now progressing under contracts existing on the said 17th day of December last, at the dams and locks at Belfast, Farmington, and Keosauqua, shall progress and be carried on under and according to the terms of the respective contracts then existing in relation thereto, if the said contractors shall so elect, and shall be paid for by the said party of the first part on the estimates made by the engineer from time to time.

Fifth. The said party of the first part doth hereby further agree and covenant that the salaries of the commissioners and register of said improvement, and the salaries of the engineers and such assistants as may be required in the prosecution of said work, shall by them be paid from time to time, as the same shall become due and payable; provided, that the salaries of the commissioner and register of said improvement shall not be greater than now fixed by law; and the salaries of the engineer and assistants shall be such as may be agreed upon by said commissioner, by and with the advice and consent of the party of the first part.

Sixth. The said party of the first part further agrees and covenants, that, in all cases where bona-fide settlement was made on any of the said lands belonging to said improvement, which were unsurveyed on the 24th day of January, 1853, the settlers on said land so unsurveyed, shall have the right to purchase, at any time within one year after said lands are surveyed, their said lands, under the rules and regulations established by the commissioner and register, at the rate of one dollar and twenty-five cents per acre; but no such settler or claimant shall be entitled so to purchase more than one hundred and sixty acres.

Seventh. The said improvement shall be prosecuted in such a manner

as not to unnecessarily impede the navigation of said river during the construction of said work, but in all cases the locks shall be constructed and finished so as to allow the passage of boats and other water crafts, before any material obstructions shall be created by the erection of dams.

Eighth. The said party of the second part, on their part hereby covenant and agree with the said party of the first part, to sell and convey to the said party of the first part, in manner and upon the terms hereinafter provided, all of the lands donated to the State of Iowa for the improvement of the Des Moines River, by act of Congress of August 8th, 1846, which the said party of the second part has not sold up to the 23d day of December, 1853; for which said lands, the said party of the first part covenants and agrees, in manner and form as fixed by this agreement, to pay the sum of thirteen hundred thousand dollars.

Ninth. The said party of the second part hereby transfers and assigns to, and hereby invests in the said party of the first part, any and all stone, timber, and all other material of every kind and description belonging to said improvement, now remaining along the line of said work, or elsewhere, and hereby gives said party of the first part full power and authority to use and control the same as they may deem proper in connection with said improvements.

764 Tenth. The said party of the second part further convenants and agrees, that the parties of the first part, their successors and assigns, shall, from the date hereof, have full possession and control of all locks and dams now completed, and shall, from time to time, as each lock and dam is completed, have the control and possession thereof, and when the whole work is completed shall have the entire and exclusive possession and control thereof for forty years, from the first day of July, 1858, and shall, from this date, have the right to control and receive, as herein provided, all tolls and water-rents accruing from said improvement, and to make such contract or contracts or agreements, and fix such rates in relation thereto, as they may deem proper: provided always, that this grant of said tolls and water-rents is made subject to the following express conditions:

1st. That the tolls to be taken and received by the said party of the first part shall, in no event, exceed the rate of tolls allowed and chargeable on the Monongahela improvement, in the State of Pennsylvania, on the 5th day of February, 1851.

2d. All contracts now outstanding between the commissioner and register, or either of them, with reference to the water-rents, with any individual or individuals, shall be carried out by the said party of the first part. And nothing herein contained shall be so construed as to interfere with said contracts, but the money arising therefrom shall belong to and become the property of the said party of the first part in the same manner as all other water-rents, as fixed by this contract.

3d. All moneys arising from said tolls and water-rents, on the entire work, after deducting the necessary contingent expenses attending the superintendence of the locks and the collection of said rents and tolls, and the repairs of said works during the time fixed for the completion of said works, shall be reported to the register of the Des Moines River improvement, semi-annually, and shall be expended by the said parties of the first part in said improvement; but such sums shall not be taken into the estimates upon which lands are to be transferred to the party of the first part, but shall constitute a portion of the one million three hundred thousand dollsrs, to be expended by the party of the first part,

and of the aggregate sum expended by the party of the first part in said improvement.

4th. At the expiration of said forty years, the works shall revert to and become the property of the State of Iowa, and shall be in ordinary repair for their respective uses.

Eleventh. The said party of the second part hereby covenants and agrees that, whenever the said party of the first part shall have done work to the amount of thirty thousand dollars, according to the estimates to be made by the acting engineer under the scale of prices fixed in their contract, the said party of the second part, or the then proper agent or officer or officers of the State, shall transfer and convey to the said party of the first part, or to the then register of said improvement, or such other persons as the party of the first part may direct, an amount in value of the lands belonging to the said improvement, valued at one dollar and twenty-five cents per acre, to the amount of thirty thousand dollars, deducting fifteen per cent., and so on in the same manner, on each estimate of thirty thousand dollars, until work shall have been done to the amount of thirteen hundred thousand dollars, if so much land shall remain unsold from and after the 23d day of December, A. D. 1853, or until said work shall have been completed. And upon the expenditure of said thirteen hundred thousand dollars, or the completion of said works, all of said lands remaining unconveyed, if any, shall be transferred and conveyed to the party of the first part, or their assigns, or to such person or persons as they shall direct. And all monies paid by the party of the first part to the register of the Des Moines River improvement, or to the commissioner thereof, in payment of the liabilities resulting from the former prosecution of the work by the State of Iowa, shall, without requiring any estimate to be made thereof by the engineer, be deemed to be a portion of the sums expended in the said improvements by the said party of the first part. And the said register shall convey to the party of the first part, or such person or persons as they shall designate, a quantity of land, estimated at one dollar and twenty-five cents per acre, equal to the amount of cash thus paid;
765 and the said sums, thus paid, shall form part of the thirteen hundred thousand dollars mentioned in this contract.

Twelfth. For the purpose of determining the lands which the said party of the first part shall have the right to select on estimates made as contemplated by the last section, it is agreed that, within a reasonable time after concluding this contract, the said party of the first part shall have all the unsold lands in this contract mentioned divided into three classes, according to value, and thereafter they shall take one-third of said amounts, as they may from time to time be entitled to from each class. And for all moneys expended, until such classification, they shall have the right to take said lands as they remain unsold, commencing with the lands lowest down on the river, making no distinction in quality or value. And for the purpose of classifying said lands, unless a commissioner is mutually agreed upon, each party may choose or select a commissioner who shall mutually agree upon such classification, and in case of disagreement, the said two commissioners shall select a third, and the decision of the majority shall be conclusive. The expense of the said commissioner shall be defrayed by the party of the first part, and the records of such classification, duly certified by the said commissioners or a majority of them, shall be filed with the register of the Des Moines River improvement, for reference by, and government of, both parties under this contract.

The river land office for the sale of lands belonging to the Des Moines

River improvement, having, in accordance with the contract with Henry O'Reilly, heretofore referred to, been closed on the 23d day of December last, the said office shall remain closed for the entry or sale of lands, excepting by the direction of the party of the first part.

Thirteenth. It is understood and agreed between the parties, that in the conveyance of land as contemplated by this contract, all moneys advanced by said party of the first part for salaries and pay of officers, or agents, or servants, for right of way, damages to mill owners, and other matters not covered by actual work done on the improvement, shall be included in making estimates; but the moneys that were in the hands of the register on the 17th day of December last, and the value of the materials on hand (which shall be used) shall not be included for estimates.

Fourteenth. And it is also agreed and covenanted between the parties hereto, that the following shall be the prices for the different items of work mentioned upon which the engineer is to make his estimates, and by which the parties are to be governed in the conveyance of land and other purposes contemplated by this agreement, adding twenty per centum to the aggregate amount of all estimates to cover all contingencies, to wit:

Repairing lock foundations, $3,000.
Masonry in lock walls, $5 per perch.
Masonry in side walls, $3 50 per perch.
Hydraulic cement, $3 per barrel.
Lock gates and all fixtures, $2,500.
Square timber, 14 cents per foot.
Oak plank, $2 25 per hundred feet, board measure.
Crib filling in dams and abutments, $1 per perch.
Stone protection, rip-rap, $1 15 per perch.
Embankments around locks, 20 cents per yard.
Excavation on canals when the dirt is wasted, 20 cents per yard; when the dirt is used in embankments, 15 cents per yard for the excavation, and 15 cents per yard for the embankment.
Excavation of rock under water, $2 per perch.
Excavation of rock above water, $1 per perch.
Iron bolts, spikes, and other irons, 8 cents per pound.
Round timber, 11 cents per foot.

Excavations for foundations, 40 cents per yard, and all other items not embraced and enumerated above shall be rated according to the estimates of the engineer in charge; and the engineer or engineers in charge of said works, shall, from time to time, as shall be found convenient, be appointed by the joint assent of both parties hereto.

Fifteenth. All the work on said improvement, during the progress thereof, shall be and remain under the general supervision of the board of public works and engineer, except as herein modified, and all the work as far as practicable, shall be conducted as to perfect the navigation in a continuous line from the mouth of the river upward to Fort Des Moines.

766 Sixteenth. That, for the purpose of providing more effectually for securing the improvement of the Des Moines River to the greatest extent and the earliest practicable period, the party of the first part shall have the right to such tolls and water-rents as they can collect on the river above Fort Des Moines, for a similar period to that provided for the use of the river below Fort Des Moines, under this contract, provided they shall, within eight years, at their own expense, improve the river, so as to render it navigable for boats of at

least two hundred tons burthen, to the Lizzard Forks, or Fort Dodge, or to such other point above Fort Des Moines as they may find it practicable. Provided, further, that no higher average of tolls shall be charged on vessels or rafts, or articles transported, than the maxi'um allowed on the section of the river between the Mississippi River and Fort Des Moines; and, provided also that at the end of said period in this section first named, the improvement on said upper region of the river above Fort Des Moines shall be surrendered to and become the property of the people of the State of Iowa, upon the payment of the said party of the first part, or their successors, of such sum as the said improvement may be worth at the time, to be determined by appraisers to be mut'ally agreed upon.

Seventeenth. The same right which is now or may hereafter be given by law to this said board of public works to condemn lands in procuring right of way for the location of dams, locks, water-power, and canals, shall be, and is hereby, given to the party of the first part, and in procuring the same they may, if necessary, use the name of the said board of public works, or that of the State, and the board shall assist therein, in accordance with the general spirit of this contract.

Eighteenth. The said party of the first part hereby covenant and agree that the State shall not be liable to them in this contract, but will look alone to the funds belonging to and arising from the said improvement for compensation, as hereinbefore mentioned; and the said party of the second part does hereby agree that, if the indebtedness named in the third section of this contract shall exceed the sum of sixty thousand dollars, the time for the use of said improvement by the said company shall be extended one year beyond the time named in the tenth section of this contract, to wit, the first day of July, in the year 1899, (eighteen hundred and ninety-'ine.)

Nineteenth. The fifteen per cent. reserved in the conveyance of land, by section eleventh of this contract, shall be esteemed and taken as a part of the thirteen hundred thousand dollars agreed to be paid by the said party of the first part in this agreement.

In witness whereof the party of the first part, by their president and secretary, have hereunto subscribed their names and placed their corporate seal, and the party of the second part, by the commissioners aforesaid, have also affixed their names and seals the day and year aforesaid.

{ OFFICIAL SEAL OF THE DES MOINES NAVIGATION AND R. R. COMPANY. }

ORVILLE CLARK, *President.*
HE'RY O'REILLY, *Sec. of the Des Moines Navigation and R. R. Company.*
JOSIAH H. BONNEY, [L. S.]
Commissioner of Des Moines River Improvement.
URIAH BIGGS. [L. S.]
GEORGE G. WRIGHT. [L. S.]

Supplementary agreement.

Whereas, by the foregoing agreement, bearing date the ninth day of June, instant, the Des Moines Navigation and Railroad Company, of the one part, and the State of Iowa, by Josiah H. Bonney, commissioner of the Des Moines River improvement, by and with the consent and approval of Uriah Biggs, George G. Wright, assistant commissioners of the said improvement, have contracted and provided for the completion of the said improvement from the mouth of the said Des Moines River to the Raccoon Fork, on the terms and according to the

plan and specifications in the said contract provided, and it being deemed desirable to enlarge the said locks and capacity of such canal as may be built in the prosecuting said improvement under said agreement.

Now therefore, this additional and supplementary agreement witnesseth—

That the said Des Moines Navigation and Railroad Company of the first part, for and in consideration of the covenants herein contained, do covenant and agree with the State of Iowa, by the commissioner and assistant commissioners herein before mentioned, to build
767 the said locks provided to be built in said agreement of the ninth of June, instant, two hundred feet long, in the same proportion that the present locks and plans provided for their being one hundred and seventy-five feet long, and that they shall be so constructed as to secure four and a half feet of water on the lower mitre sill, and to secure a navigation of at least four and a half feet of water. And the canals shall be so constructed as to give at least four and a half feet of water, with suitable dimensions for boats or vessels navigating the same, with such depth of water at the locks and in the cannals, and in all other respects, the said work is to be done under and in pursuance of the terms and conditions of the said contract of the ninth of June, instant.

And the said party of the second part, the State of Iowa, by the commissioner and assistant commissioner aforesaid, do covenant and agree with the party of the first part, that the said party of the first part shall have and enjoy the said works, its use, rights, and privileges, its tolls, water-rents, and franchises, for the term of sixty years from the first day of July, 1858, fully and absolutely as is provided in said agreement of the ninth of June, instant, for forty years; and on the same terms therein provided, saving and excepting that, from and after the first day of July, (1913) one thousand nine hundred and thirteen, until the first day of July, (1918,) one thousand nine hundred and eighteen, the said party of the first part shall pay into the treasury of the State of Iowa seven per centum of the nett amount of the tolls and water-rents received on the said improvement from the said Raccoon Forks to the mouth of the said Des Moines River, after deducting all expenses of repairs, superintendence and other proper charges.

In witness whereof the said party of the first part, by their president and secretary, have hereunto subscribed their names and affixed their corporate seal. And the party of the second part, by the commissioners aforesaid, have subscribed their names and affixed their seals this ninth day of June, 1854, (one thousand eight hundred and fifty-four.)

OFFICIAL SEAL OF THE DES MOINES NAVIGATION AND R. R. COMPANY.

ORVILLE CLARK, *President.*
HENRY O'REILLY,
Sec. of the Des Moines Navigation and R. R. Company.
JOSIAH H. BONNEY, [L. S.]
Commissioner of Des Moines River Improvement.
URIAH BIGGS. [L. S.]
GEORGE G. WRIGHT. [L. S.]

I, Ed. Wright, secretary of state of the State of Iowa, hereby certify that I have compared the above printed copy of "Contracts of the Des Moines Navigation and Railroad Company," with the original now on file in this office, and find the same correct.

In testimony whereof I have hereunto set my hand and caused the great seal of the State of Iowa to be affixed.

Done at Des Moines this 26th day of May, A. D. 1871.

{ GREAT SEAL OF THE STATE OF IOWA. } ED. WRIGHT, *Secretary of State.*

768 LIII.—*Secretary McClelland to Commissioner Hendricks, June 9th*, 1856.

(Printed in Exhibit VII to plaintiff's bill. Transcript 79; this record, p. 59.)

LIV. *Reverdy Johnson to Secretary McClelland, Nov. 18th*, 1856.

WASH'N, 10 *Nov.*, '56.

SIR: In the matter of the Des Moines River improvement grant, I applied in behalf of the comp'y, to whom the State assigned the lands granted by the U. States, to have patents issued for the selections made and duly approved of sections below and above the Raccoon Fork. I am aware that this of itself is, and is supposed by your Department to be, sufficient to vest the title in the company, but in consequence of the different construction of the grant, made by the U. States, a cloud rests over such title which, in a great measure, renders the lands unavailable. This would be perhaps entirely removed if patents were issued, and it was with that view that I applied for them. It seemed to me that, as no possible injury could result from their issue to the U. States, and the security of the grantees be made the better, and they enabled to dispose of the property to better advantage, *that* there could be no objection to the gratification of my application.

The general power to issue patents to give title to all lands in any way acquired from the U. States seemed to me to be clear, and this as an incident to the actual grant; that, in this view, no particular statutory authority need exist, and that if such authority was given in any case it was but cumulative. Please consider the matter at your earliest leisure, and give me the result. Should you not agree with me as to the patents, say if I am not correct in the opinion that the selections and approval pass the entire title of the U. States as effectually as patents would pass it.

With great regard, your obedient servant,

REVERDY JOHNSON.

Honorable Mr. MCCLELLAND,
&c., &c., &c., Washington.

769 LV. *Secretary McClelland to Reverdy Johnson, Nov. 10th*, 1856.

DEPARTMENT OF THE INTERIOR,
November 10th, 1856.

SIR: Having duly considered the subject brought to my attention personally a few days since, and specially referred to in your letter of this date, I have not been able to satisfy myself that the Department has any power to issue patents where the law not only does not authorize it to be done, but provides another mode for the passing of the title to the lands in question; and the practice having been in accordance with this view of the absence of authority, I deem it proper to adhere to it.

In the opinion of the Attorney General of the 29th May last, in the Des Moines River case, it is stated: "In so far as regards selections already approved, whether by yourself or by Mr. Stuart, it is clear that the Government cannot undo that. What Mr. Stuart did in this respect with deliberation, what you did without the question involved being suggested to you, was in each case done by the competent legal authority, and binds the Government. One Secretary has no more lawful power to undo a thing lawfully done by his predecessor in a matter of grant than in a matter of account; no more right where a settlement is in favor of a third party than where it is in favor of the United States. Where a thing is decided and done by the head of a Department, acting within the scope of his lawful authority, it can be revised by his successor only on the ground of mistake in a matter of fact, or the discovery and production of material new testimony. (Mr. Crittenden's opinion, of December 28th, 1852, MS.; see also Bank of Metropolis vs. The United States, XV Peters, p. 400; ex-parte Randolph, II Brocken, p. 470.)

"If the acts of Mr. Stuart and yourself, in this respect, had undertaken (as they do not) to dispose of any contending rights of third parties, the latter would have had their remedy at law. But what you have done is final, as respects the United States."

In the foregoing views of the Attorney General I have concurred; and, for the reasons that the acts of approval by Mr. Stuart and myself have divested the United States of the title, I can see still further ground to decline issuing a patent or patents, as that would be assuming that the title had not yet passed, and the question would be yet open for adjustment, like selections not yet approved.

Respectfully your obedient servant,

R. McCLELLAND,
Secretary.

To Hon. R. JOHNSON, *Baltimore, Md.*

770 LVI. *Commissioner Hendricks to Henn, agent, &c., March 3rd 1857.*

GENERAL LAND OFFICE, *March* 3, 1857.

SIR: In reply to your communication of the 28th ultimo, requesting a statement of the quantity of land which will enure to the Dubuque & Pacific Railroad Company in Iowa, under the act of Congress approved 15th May, 1856, subject to the terms and conditions in said act, and to the acts of the legislative assembly of said State, the following estimates, carefully prepared at this office, are communicated:

1. The length of the Dubuque & Pacific road and branch to Tete des Morts, measured on the official map of the routes, is 331½ miles. Which at six sections, or 3,840 acres per mile, would

make	1,272,960	acres.
Deduct for water	21,920	"
Leaves	1,251,040	"

To which the company would be entitled if found vacant in the odd-numbered sections within fifteen miles of the road.

2. The estimated quantity of vacant lands in the odd-numbered sections, within *within* fifteen miles of the road, and liable for selection, (all situated in Iowa,) is as follows:

In the Sioux City district	880,200	acres.
" Fort Dodge "	415,360	"
" Dubuque "	11,045	"
Total	1,306,605	"

Which is exclusive of the quantity of 151,800 acres claimed for the Des Moines River grant above the Raccoon Fork, within the fifteen-miles limit of the railroad grant, and not yet decided.

It appears, therefore, from the above, that the Dubuque & Pacific Railroad Company will obtain their full complement of land under the grant, estimated to cover 1,251,040 acres.

I am, very respectfully, your obedient servant,

THO'S A. HENDRICKS,
Commissioner.

Hon. BERNHART HENN,
Agent of the State of Iowa and the Railroad Companies, Washington, D. C.

771 LVII. *Joint resolution (of the legislature of Iowa) containing propositions for a settlement with the Des Moines Navigation and Railroad Company, approved March 22, 1858.*

(Printed in Exhibit IX to plaintiff's bill. Transcript, p. 116; this record, p. 82.)

LVIII. *An act disposing of the grant of land made by an act of Congress granting land to the Territory of Iowa to aid in the improvement of the Navigation of the Des Moines River, approved March 22d, 1858.*

(Printed in Exhibit IX of plaintiff's bill. Transcripts, p. 122; of this record, p. 86.)

LIX. *An act appointing a commission to procure the lands granted for the improvement of the navigation of the Des Moines River, approved March 22d, 1858.*

(Printed in Exhibit VII, plaintiff's bill. Transcript, p. 80; this record, p. 60.)

772 LX. *The acceptance of the settlement proposed by the joint resolution of March 22d, by the Des Moines Navigation and Railroad Company, April 15th, 1858.*

OFFICE OF THE DES MOINES NAVIGATION AND
RAILROAD COMPANY,
No. 18 William St., New York, April 15th, 1858.

At a meeting the board of directors of the Des Moines Navigation and Railroad Company held at their office in the city of New York, on Thursday, the 15th day of April, 1858, the following preamble and resolutions were adopted, to wit:

Whereas, by joint resolution of the general assembly of the State of Iowa, approved the 22nd day of March, 1858, the said general assembly did enact as follows, viz :

Joint resolution containing propositions for a settlement with the De' Moine' Navigation and Railroad Company.

Whereas the Des Moines Navigation and Railroad Company have heretofore claimed and do now claim to have entered into certain contracts with the State of Iowa, by the officers and agents, concerning the improvement of the Des Moines River in the State of Iowa; and whereas disagreements and misunderstandings have arisen and do now exist between the State of Iowa and said company, and it being conceived to be the interest of all parties concerned to have said matters and all matters and things between said company and the State of Iowa settled and adjusted: Now, therefore,

Be it resolved by the general assembly of the State of Iowa, That, for the purpose of such settlement and for that purpose only, the following propositions are made by the State to said company: That the said company shall execute to the State of Iowa full releases and discharges of all contracts, agreements, and claims with or against the State, including rights to water-rents which may have heretofore or do now exist, and all claims of all kinds against the State of Iowa and the lands connected with Des Moines River improvement excepting such as are hereby secured by the State to the said company and also surrender to said State the dredge-boat and its appurtenances belonging to said improvement; and the State of Iowa shall, by its proper officer, certify and convey to the said company all lands granted by an act of Congress, approved August 8th, 1846, to the then Territory of Iowa, to aid in the improvement of the Des Moines River, which have been approved and certified to the State of Iowa by the General Government, saving and excepting all lands sold or conveyed or agreed to be sold or conveyed by the State of Iowa, by its officers and agents, prior to the 23d day of December, 1853, under said grant; and said company or its assigns shall have right to sell all of said lands so herein granted to them as fully as the State of Iowa could have under and by virtue of said grant, or in any manner whatever, with full power to settle all errors, false locations, omissions, or claims in reference to the same, and all pay or compensation therefor by the General Government, but at the cost and charges of said company, and the State to hold all the balance of said lands and all rights, powers, previleges under and by virtue of said grant, entirely released from any claim by or through said company; and it is understood that among the lands excepted and not granted by the State to said company are 25,487.87 acres lying immediately above Raccoon Forks, supposed to have been sold by the General Government, but claimed by the State of Iowa. And it is further agreed that said company release and convey to the State of Iowa, or its representatives, all materials of every kind and description prepared for, or intended for, the construction of locks or dams in said improvement, wheresoever the same may be, and the State shall take the existing contracts, but no other liabilities of any name or nature except as herein provided for, constructing or repairing the works of improvement at Keosauqua, Bentonsport, Plymouth, and Croton, and *on* other or different , with all liabilities and advantages arising upon such contract and percentage retained thereon, excepting that the company shall pay all estimates for work done or material prepared up to this date beyond the per centage retained from the contractors under their agreements, and the said company shall be discharged from all claims against the State or the said improvement, or any of its offic'rs or agents, arising from or growing out of any agreement or liability prior to the 9th day of June, 1854, and said company shall be discharged from

all liability for the claims of the officers of the State for services or salaries. The said company hereby agrees to pay the State the sum of twenty thousand dollars, which sum shall be paid to the commissioner of the Des Moines River improvement, as fast as he may require the same to liquidate existing liabilities against said Des Moines River improvement, on thirty days' notice given to said company at their office in the city of New York; and any bonds or certificates of indebtedness against said improvement, not exceeding in amount the sum of eleven thousand dollars, which are now due and unpaid, are to be re-
773 ceived in part payment of said sum of twenty thousand dollars, provided that no liabilities assumed by the State in this contract shall be a charge against the State in her sovereign capacity, but all such charges, if any, shall be charg'able upon and payable out of the remaining lands belonging to the Des Moines River grant, and provided also, that if Congress shall permit a division of the lands of the Des Moines River grant, or the title thereto shall become vested in the State so as to become subject to grant, the said remaining lands, after the payment of all the liabilities as aforesaid against said improvement, and the completion of such locks and dams in the Des Moines River as the legislature direct, shall be granted to the Keokuk, Fort Des Moines & Minnesota Railroad Company to aid in the construction of a railroad up and along the valley of the Des Moines River, upon such terms and in such manner as the legislature may provide, one-fourth of which said lands shall be applied by said company to and in the construction of said road above the city of Des Moines: and provided further, that if the Des Moines Navigation and Railroad Company shall *not*ify and accept these propositions for a contract, by filing a written acceptance thereof in the office of the secretary of state within sixty days from the passage of this joint resolution, then this contract shall be in force and bind both of the parties thereto.

(Signed) STEPHEN B. SHELLEDY,
Speaker of the House of Representatives.
ORAN FAVILLE,
President of the Senate.

Approved March 22d, 1858.

RALPH P. LOWE.

STATE OE IOWA, *ss:*

I, Elijah Sells, secretary of the State of Iowa, hereby certify that the foregoing is a true copy of the original roll on file in my office.

In testimony whereof I have hereunto set my hand and affixed the great seal of the State of Iowa. Done at Des Moines, this 22d day of March, 1858.

[L. S.] (Signed) ELIJAH SELLS.

Resolved, That the propositions and conditions of the above-recited joint resolution be, and they are hereby, ratified and accepted by the Des Moines Navigation and Railroad Company, and that the president of the company cause a certified copy of this resolution under the corporate seal, to be filed in the office of the secretary of state, of the State of Iowa.

Resolved, That the president be, and is hereby, authorized to execute under the corporate seal of the company, the necessary and proper releases and discharges in conformity with the provisions and conditions of the said joint resolutions of the general assembly of the State of Iowa, and to cause the same to be filed in the office of the secretary of state of the State of Iowa.

I hereby certify that *that* the foregoing is a true copy of the resolutions of the Des Moines Navigation and Railroad Company, adopted by the board of directors of said company, at a meeting held on the 15th day of April, 1858, and duly recorded upon their book of minutes.

In witness whereof I have hereunto affixed the corporate seal of said company, together with my signature as its president, and have caused the same to be witnessed by the secretary of said company.

(Signed) R. S. BURROWS,
Pres. De' Moine' Nav. & R. R. Co.

JAMES C. PATTERSON,
Sec. De' Moine' Nav. & R. R.

I, E'd Wright, secretary of state of the State af Iowa, hereby certify that the above is a true and correct copy of the "joint resolution containing propositions for a settlement with the Des Moines Navigation and Railroad Company," approved March 22nd, 1858, and the resolutions of the Des Moines Navigation and Railroad Company accepting the propositions contained in said joint resolutions as the same appear of record in this office.

In testimony whereof I have hereunto set my hand and caused the great seal of the State of Iowa to be affixed.

Done at Des Moines, this 26th day of May, A. D. 1871.

{GREAT SEAL OF IOWA.} E'D WRIGHT,
Secretary of State.

774 LXI. *Certificate of Governor Lowe to the President, April 28th, 1858.*

EXECUTIVE CHAMBER, IOWA,
Des Moines, April 28, 1858.

To his Excellency JAMES BUCHANAN,
President of the United States:

I, Ralph P. Lowe, governor of the State of Iowa, as required by act of Congress, approved August 8th, 1846, "granting certain lands of the Territory of Iowa to aid in the improvement of the navigation of the Des Moines River, in said Territory," do hereby certify that there has been expended from time to time, prior to the date hereof, on the improvement of said river, as the work has progressed, and the money has been required under certain contracts made by the State of Iowa with The Des Moines Navigation and Railroad Company, the sum of three hundred and thirty-two thousand six hundred and thirty-four $\frac{4}{100}$ dollars ($332,634 04,) and in consideration of said expenditures on said improvement, and in pursuance of the provisions of the act of Congress, approved as aforesaid, there will be conveyed to said Des Moines Navigation and Railroad Company two hundred and sixty-six thousand one hundred and seven $\frac{23}{100}$ acres (266,107 $\frac{23}{100}$ acres) of the land belonging to said grant, and which have been certified and approved to the State of Iowa under said act for the prosecution of the improvement of said river Des Moines.

In testimony whereof I, Ralph P. Lowe, governor of the State of Iowa, have caused the great seal of the State of Iowa to be hereunto affixed, together with my signature.

[L. S.] RALPH P. LOWE.

By the governor:
ELIJAH SELLS,
Secretary of State.

775 LXII. *Section* 1202, *code of* 1851, *reprinted as section* 2210 *of the revision of* 1860. *(Statutes of Iowa.)*

"Where a deed purports to convey a greater interest than the grantor was at the time possessed of, any after-acquired interest of such grantor, to the extent of that which the deed purports to convey, enures to the benefit of the grantee."

776 LXIII. *Mason, agent, &c., to Secretary Thompson, April 30th,* 1858.

(Printed in Exhibit VII to the plaintiff's bill. Transcript, p. 81; this record, p. 60.)

LXIV. *Secretary Thompson to Mason, agent, &c., May 7th,* 1858.

(Printed in Exhibit VII to the plaintiff's bill. Transcript, p. 82; this record, p. 61.)

LXV. *Mason, agent, to the President, May 10th,* 1858.

(Printed in Exhibit VII of the plaintiff's bill. Transcript, p. 81; this record, p. 61.)

LXVI. *Deeds of the State of Iowa to The Des Moines Navigation and Railroad Company, of May 3rd,* 1858, *and May 18th,* 1858.

(Printed in Exhibit IX of the plaintiff's bill. Transcript, pp. 119–121; this record, pp. 84.)

777 LXVII. *The opinion of Attorney General Black, November 22d* 1858.

(Printed in Exhibit VII to the plaintiff's bill. Transcript, p. 95; this record, p. 69.)

LXVIII. *Commissioner Hendricks to Jones, Senator, February 17th,* 1859.

GENERAL LAND OFFICE,
February 17th, 1859.

SIR: I have the honor to acknowledge the receipt of the petition referred by you to the Department on the 12th inst. of sundry citizens of Fort Dodge district, Iowa, asking that certain lands in said district may be brought into market, and in regard to the matter to state that the lands referred to by the memorialists are withheld from market in view of the grant to Iowa by act of August 8, 1846, to aid in the improvement of the Des Moines River.

Very respectfully, your obedient servant,

THO'S A. HENDRICKS,
Commissioner.

Hon. G. W. JONES,
U. S. Senate.

778 LXIX. *Secretary Thompson to the Commissioner of the General Land Office, March 26th,* 1859.

DEPARTMENT OF THE INTERIOR,
Washington, March 26, 1859.

SIR: I transmit to your office herewith a copy of the opinion given

on the 22d November last, by the Attorney General of the United States, as to the extent of the grant to the State of Iowa to aid in the improvement of the navigation of the Des Moines River, by the act of Congress approved August 8th, 1846, and also a copy of my communication of the 25th August, which elicited this opinion.

In the views of the Attorney General as thus expressed I fully concur, and it therefore only remains for me to inform you that no future action can be taken in this Department, or in your office, which will recognize the grant as extending above the Raccoon Forks of the Des Moines River.

Lists of selections which have been approved by my predecessors will be respected by your office.

Very respectfully, your obedient servant,

J. THOMPSON,
Secretary.

The COMMISSIONER OF THE GENERAL LAND OFFICE.

779 LXX. *Chapter* 16, *special acts of general assembly of Iowa*, 1860, *being "An act in relation to the Des Moines River improvement, and abolishing the office of commissioner thereof," approved March 3rd*, 1860

Lands to pay liabilities.

Where set apart.

SECTION 1. *Be it enacted by the general assembly of the State of Iowa*, That the fifty thousand acres of land to be set apart by the register of the State land office under the second section of an act of the general assembly, approved March 22, 1858, entitled "An act disposing of the grant of land made by an act of Congress, granting land to the Territory of Iowa to aid in the improvement of the navigation of the Des Moines River," shall be taken from the lands next above those transferred by the State to Des Moines Navigation & Railroad Company by the terms of settlement with that company, authorized by joint resolution of the general assembly, approved March 22, 1858.

780 SEC. 2. That the uncompleted dams to be built by the Keokuk, F't Des Moines and Minnesota Railroad Company, as provided by said second section of the act above referred to, shall be completed as follows: That is to say, the dam at Keosauqua shall be completed in one year after the lands granted to said railroad company by said act shall have been certified by the General Government *of* the State of Iowa, or otherwise become the property of said company, and the dam at Plymouth, and the other works within two years after the lands shall have been certified as aforesaid.

Completion of dams.

Office of com'r abolished.

SEC. 3. That the office of commissioner of the Des Moines River improvement be, and the same is hereby, abolished.

Com'rs appointed to ascertain liabilities.

SEC. 4. That Geo. G. Wright, of Van Buren Co., Edward Johnston, of Lee County, and Christian W. Slagle, of Jefferson County, be, and they are hereby, appointed a board of commissioners for the purpose of ascertaining all the liabilities, whether in suit or otherwise, against the said

781 Des Moines River improvement, and against the

State of Iowa, growing out of said improvement, and which are to be paid by the Keokuk, Fort Des Moines and Minnesota Railroad Company, as provided by the said second section of the act of 22d of March, 1858, above referred to.

Meeting of com'rs.

SEC. 5. Said commissioners, or a majority of them, shall meet at the city of Keosauqua, in the county of Van Buren, within six months after the passage of this act, or as soon thereafter as practicable; and shall organize the board by taking an oath that they will well and truly discharge the duties imposed upon them by this act.

Notice to claimants.

SEC. 6. After having organized, said commissioners shall give public notice of the time and place of their meeting, and the objects of the commission, by a general notice to all persons claiming to be entitled to be paid by the provisions of said section of the said act of March 22, 1858, that
782 unless they present their claims within six months after the time fixed in said notice for the meeting of the board, they will not thereafter be received or acted upon, but forever barred; which notice shall be published for at least four weeks in some newspaper published at the county seat of Van Buren County, and a newspaper published in the city of Keokuk.

Com'rs a court to determine the right of claimants.

SEC. 7. After said notice shall have been given, said commissioners, or a majority of them, shall meet at the time and place appointed by said notice, and proceed to hear testimony, and decide upon the validity of all claims presented which are legal and equitable, and the amount thereof, which decision shall be final and conclusive, and may adjourne from time to time during and after the said six months from the time of their meeting until they shall have decided upon all the claims presented within said six months; and at any time during said six months, when said board shall not be in session, claims may be filed with
783 the clerk of the district court of the county in which the board sits, and it shall be the duty of said clerk to present said *said* claims so filed to the said commissioners at their first meeting thereafter. Said commissioners shall have power to administer oaths, and to compel the attendance of witnesses and the production of papers; and the sheriff of the county, in which the board sits, shall serve and execute the necessary p'ocesses, when required by said commissioners, and all claims not presented within the said six month' shall be forever barred.

Register of State land office to audit claims.

SEC. 8. When any of the claims aforesaid shall have been decided, the commissioners shall report the same to the register of the State land office, who shall audit said claims and none others, in accordance with the second section of said act of the 22d March, 1858, and it shall be the duty of the Keokuk, F't Des Moines and Minnesota Railroad Company to pay said liabilities so audited, one-half within one year, and one-half within two years after the aforesaid
784 lands shall have been certified to the State of Iowa, or otherwise become the property of said company, with ten per cent. interest thereon from the time said claims were audited.

Claims paid by K., F't D. M. & M. R. R. Co.

Register to certify lands to K., F't D. M. R.R. Co.

SEC. 9. For every three thousand dollars' worth of work done on the locks and dams, and for every three thousand dollars of said audited liabilities paid by the said Keokuk, Fort Des Moines and Minnesota Railroad Company, in accordance with the 2d section of the said act of March 22, 1858, the register of the State land office shall certify to said company 1,000 acres from said 50,000 acres of land.

Comm'rs to complete dams on the failure of Ke., F. D. M. R. R. Co.

SEC. 10. In case said Keokuk, Fort Des Moines and Minnesota Railroad Company shall not complete said dams and pay said audited liabilities as hereinbefore provided, then the said commissioners shall proceed to complete said dams and pay said liabilities by the sale or mortgage of so much of said fifty thousand acres of land as may be necessary for that purpose, provided that said commissioners may give said railroad company further time for the completion of said dams, if, in their opinion the said company shall have proceeded in the construction thereof in good faith, and that said further time is necessary.

The State shall sell water-power and land.

SEC. 11. Said commissioners shall, as soon after the organization of the board as may be expedient, proceed to sell all the interest of the State in all such locks and dams belonging to the Des Moines River improvement and the land appertinent thereto, and the water-power thereto belonging, as shall have been completed by the State, or by the said railroad company; and shall also sell the dams and water-power at Keosauqua and Plymouth in the same manner, when said dams shall have been completed, and shall make conveyances in the name of the State without warranty to the purchasers of the interest so sold, containing covenants on the part of said purchasers, that they and their heirs and assigns shall and will forever keep said locks and dams in good repair, and that they will at all reasonable times pass boats through said locks, and charge only such tolls as may be agreed upon between said commissioners and the purchasers, not exceeding the maximun rates prescribed in the contract by the State with the Des Moines Navigation & Railroad Company, which conveyances shall also be executed by the purchasers as parties of the second part thereto, and said sale shall be made upon such terms as will secure the State against all liability upon any leases or contracts for water-power heretofore executed between the officers of the improvement and individuals, and the proceeds of said sales shall be applied, first, to the payment of the expenses of said sales; second, to the payment of said commissioners; third, to the payment of damages for any lands condemned, and fourthly, any balance that may remain shall be paid on the audited claims herein provided for.

Dams to be kept in repair.

Tolls.

State not to be liable.

Proceeds arising from sale of water power.

Comm'rs' compensation.

SEC. 12. Said commissioners shall receive five dollars per day for the time actually employed in said commission, provided, that the aggregate per diem of each of said commissioners shall not exceed three hundred dollars; which, if not paid by the proceeds of the sales aforesaid, shall be paid by the said Keokuk, Fort Des Moines and Minnesota Railroad Company, as one of the audited claims hereinbefore provided for.

Mat'rials to be relinquished to K., F. D. M. R. R. Co.

SEC. 13. That all stone, timber, and other materials, belonging to said Des Moines improvement, and not necessary to be used in the construction of the locks and dams provided for in the second section of the said act of the 22d of March, 1858, are hereby relinquish' and transfer' to the Keokuk, Fort Des Moines & Minnesota Railroad Company.

Vacancy of comm'rs to be filled by appointment by the governor.

788 SEC. 14. In case of the death, resignation, or refusal to act, of any of said commissioners, it shall be the duty of the governor to fill such vacancy by appointment.

Comm'rs may purchase land adjacent to dams.

SEC. 15. Said commissioners shall have power to procure for the State at any one of said points where dams are or may hereafter be erected, the land upon which any *any* part of any lock, or dam, or abutment, is or may be erected, and also a sufficient quantity of land at and adjacent to said dams, not exceeding two acres in extent on each side of the river, to make the water-power created by said dam available and of value to the State, by condemning said land in the same manner as is or may be provided by law for condemning land for right of way for railroads; and any damages which may be awarded to the owners of such lands, shall be paid out of the proceeds of the sale of the dam and water-power
789 for the benefit of which land is condemned; the possession of said lands not to be taken after the condemnation until the damages are paid.

SEC. 16. This act to be in force from and after its publication in the Iowa State Register and Keosauqua Republican.

Approved March 3d, 1860.

I hereby certify that the foregoing act was published in the Iowa State Register, March 14, 1860, and in the Keosauqua Republican, March 16th, 1860.

ELIJAH SELLS,
Secretary of State.

790 LXXI. *Chapter* 63.—*Special laws of Iowa*, 1860, *approved April 25th*, 1860.

DES MOINES RIVER LANDS.

An act making provisions for the settlement of all liabilities of the State growing out of the sale of certain lands of the Des Moines River improvement grant as school lands.

Whereas certain contracts have been entered into between school fund commissioners, acting under the directions of "the superintendent of public instruction," an officer of this State, and citizens of the State, for the sale and purchase of a part of the school lands of the State, known as the 500,000-acre grant; and

Whereas the State of Iowa has, by a settlement with The Des Moines Navigation and Railroad Company, conveyed said lands in whole or in part to said company; therefore—

SECTION 1. *Be it enacted by the general assembly of the State of Iowa*, That, upon the presentation (or proof of in case of loss) of any contract for the sale of any of said lands situated in Webster or Hamilton Coun-

ty, executed by John Tolman, late school fund commissioner of Webster County, or of any certificate of final payment from said school fund commissioner, or of any patent for said lands under any contract made by said school fund commissioner to the governor of the State with proof satisfactory to him by the affidavit of the holder of said contract, certificate, or patent, as the case may be, or such other proof as he may require, of the amount of money paid upon any tract or tracts of said land, he shall make a complete statement, showing the amount of money so paid, whether as principal or interest, and the time when each sum of money was paid, and upon the delivering up any contract, certificate, or patent, as the case may be, to the governor, or in case of loss, upon proper proof, he shall deliver the statement aforesaid by him signed, to the holder of said contract, certificate, or patent, as the case may be.

SEC. 2. Upon the presentation of said statement so made by the governor, as aforesaid, to the auditor of the State by the holder, the auditor shall audit the amount due as shown by said statement, with ten per cent. interest upon each sum so paid on said contract, certificate, or patent, from the time of payment until the time said account shall be audited as aforesaid, and shall draw his warrant on the treasurer of State for the amount so audited.

SEC. 3. There is hereby appropriated out of any moneys in the State treasury not otherwise appropriated, the sum of four thousand dollars, or so much thereof as may be necessary, to pay any claims to be audited under the provisions of this act.

SEC. 4. The contracts, certificates, or patents, or in case of loss, the proof of said contracts, certificates, or patents, as returned to the governor, shall be filed in the office of the register of the State land office.

SEC. 5. No person holding any contract, certificate, or patent for any of the lands aforesaid, sold by said commissioner, shall be required to present the same, as provided for under the provisions of this act, and no person presenting the same and receiving the money, to be paid as herein provided, shall be prohibited, in any manner, from receiving, under color of title or otherwise, for any improvements made upon said lands included in any contract, certificate, or patent, as aforesaid, and no person receiving money under the provisions of this act, shall, in any manner, have any further claim on the State by reason of said contract, certificate, or patent, and the receiving of the money as aforesaid, and making settlement with the State as provided by this act, shall in no way prejudice any legal rights of the party so receiving it, which he may have against any other party, the State only excepted, as aforesaid.

SEC. 6. Any person who may have made valuable improvements upon any of said lands, patented to the Des Moines Navigation and Railroad Company by the State, and before that time sold by said school fund commissioner, or the assignee of the person so making such improvements, may commence suit against said company, or the person claiming title under said company, for the value of said improvements, and such person shall be entitled to receive the value of said improvements made before the passage of the act conveying said lands to said company from the party who is at the time of the commencement of such suit the owner of said land.

SEC. 7. This act to take effect and be in force from and after its publication in the Weekly Iowa State Register and Fort Dodge Sentinel.

Approved April 2, 1860.

Took effect by publication April 25, 1860.

791 LXXII. *The decision of the Supreme Court of the United States in "The Dubuque and Pacific Railroad Company, plaintiffs in error, v. Edwin C. Litchfield."*

(Printed in the 23d volume of Howard's Reports, at page 66.)

LXXIII. *Notice continuing reservation of the lands from sale, May 18th, 1860.*

No. 661. Notice respecting certain lands in the State of Iowa.

Notice is hereby given that the lands along the Des Moines River, in Iowa, and within the claimed limits of the Des Moines grant in that State, above the mouth of the Raccoon Forks of said river, which have been reserved from sale heretofore on account of the claim of the State thereto will continue reserved for the time being, from sale or from location, by any species of scrip or warrants, notwithstanding the recent decision of the Supreme Court against the claim.

This action is deemed necessary to afford time for Congress to consider, upon memorial or otherwise, the case of actual bona-fide settlers, holding under titles from the State, and to make such provision, by confirmation or adjustment of the claims of such settlers, as may appear to be right and proper.

JOS. S. WILSON,
Commissioner of the General Land Office.

GENERAL LAND OFFICE, *May* 18, 1860.

792 LXXIV. *Steiger, agent, &c., to Commissioner Wilson, May 25th, 1860.*

WASHINGTON, *May 25th*, 1860.

Hon. JOSEPH S. WILSON,
Comm'r Gen'l Land Office.

SIR: Referring to the recent decision of the Supreme Court of the United States on the Des Moines River improvement claim, I herewith transmit a list, marked C, of my selections of this date for and on account of the Dubuque and Pacific Railroad and branch, under the act of 15th May, 1856, of the interfering lands in the Fort Dodge district, Iowa, within the six and the fifteen miles limits of said railroad grant heretofore held in suspension in our adjustment.

This list discriminates the lands conditionally approved for the river grant, from those not yet approved in any list, and embraces as follows:

Whole quantity 6-mile limits	59,418.22	acres
15-miles "	73,792.35	"
Total	133,606.57	

Of which the quantity not yet approved all west of the river, is as follows:

Not approved 6-miles limits	15,450.47	
15 "	16,214.12	
Total	31,664.59	

I also enclose a connected diagram, marked D, showing by the pink and yellow shades thereon, the lands hereby selected.

Please acknowledge the receipt hereof.

Very respectfully, your obed't serv't,

W'M T. STEIGER, *Agt., &c.*

793 LXXV. *Commissioner Wilson to Steiger, agent, &c., June 12th, 1860.*

GENERAL LAND OFFICE, *June 12th*, 1860.

W. T. STEIGER, Esq., *Washington, D. C.*

SIR: I have to acknowledge the receipt of your letter of the 25th ult'o enclosing lists and maps of lands selected and claimed under the railroad grant to Iowa, by act of May 15, 1856, for the Dubuque and Pacific Railroad.

The tracts in said lists are above the Raccoon Fork, and within the lands that have been selected under the Des Moines River grant by act of 1846, and in view of the recent decision of the Supreme Court, affecting a title to lands under the grant above the said fork, the present lists are handed in by you.

As the matter has been placed in train for congressional intervention, no action can be taken in the matter presented by you, until Congress shall have time to consider and dispose of the subject.

Very respectfully, your ob'd't serv't,

JOS. S. WILSON,
Commissioner.

794 LXXVI. *Commissioner Wilson to Secretary Thompson, July 7th, 1860.*

GENERAL LAND OFFICE, *July 7th*, 1860.

Hon. J. THOMPSON, *Sec. of Interior.*

SIR: I have the honor to return herewith the letter dated 26th ultimo, from W. T. Stiger, agent, &c., asking that certain lands selected & claimed under the railroad-grant act to Iowa of May 15, 1856, may, without further delay, be certified to the State, and, pursuant to ref'rence, respectfully submit that the lands referred to are embraced in certain lists filed in this office during the past month, in view of the recent decision of the Supreme Court, affecting a title to lands under the Des Moines River grant of 1846, above the Raccoon Fork. The tracts
795 in said lists are above the Raccoon Fork and within the lands that have been selected under the above-mentioned river grant.

Upon the receipt of these lists Mr. Steiger was advised that, as the matter had been placed in train for congressional intervention, no action could be taken by this office until Congress should have had time to consider & dispose of the subject.

Without passing upon, or in fact considering the question as to the right of the State under the railroad grant to these lands, which, at the date of that grant, had been withdrawn from sale or location, the fact that Congress has taken incipient action in the matter, of itself, justifies us in not recommending further proceedings by the Department, until after the close of the next session of Congress.

Very respectfully, your ob't serv't,

JOS. S. WILSON, *Commissioner.*

796 LXXVII. *Commissioner Wilson to Secretary Thompson, August 13th, 1860.*

GENERAL LAND OFFICE, *August* 13, 1860.

SIR: I have the honor to lay before you (No 1) a proclamation of public lands in the Fort Dodge and Sioux City districts, Iowa, embracing 1,270,623 acres heretofore unoffered, the sales to be held as follows:

At Fort Dodge, November 19, 1860.

At Sioux City, November 26, 1860.

This (No. 1) proclamation embraces the lands in the yellow shades on the enclosed diagram "A," also those in the blue shades. The blue shades are lands above the Raccoon Forks, which had been claimed under the Des Moines River grant before the recent decision of the Supreme Court. It does not, however, embrace any of the lands south of the blue shades and above the forks, which had been certified to the State under sanction of your predecessors, according to the then claimed limits of the Des Moines grant.

No. 2 is an alternate proclamation for 496,730 acres, excluding the blue-shaded lands, and only embracing the yellow, and is submitted in case it should be decided to await action by Congress over the whole claimed extent of the Des Moines grant.

Very respectfully, your obedient servant,

JOS. S. WILSON, *Commissioner.*

(Indorsement.)

DEPARTMENT OF THE INTERIOR,
August 14, 1860.

Respectfully submitted to the President, with the recommendation that the lands be proclaimed for sale according to the form No. 1 enclosed.

J. THOMPSON, *Secretary.*

797 LXXVIII. *Secretary Thompson to the Commissioner of the General Land Office, August 15th, 1860.*

DEPARTMENT OF THE INTERIOR,
Washington, Aug. 15, 1860.

SIR: Herewith I enclose the President's proclamation for the public sale of certain lands in Iowa, according to the form No. 1, enclosed with your report of the 13th instant.

You will please to cause due publication to be made, and also furnish to the local land officers any instructions necessary for the proper management of the sales.

Very respectfully, your ob'd't servant,

J. THOMPSON, *Secretary.*

To the COMMISSIONER OF THE GENERAL LAND OFFICE.

798 LXXIX. *Proclamation for the sale of lands, August 14th, 1860.*

(No. 640.)

By the President of the United States:

In pursuance of law I, James Buchanan, President of the United

States of America, do hereby declare and make known that public sales will be held at the undermentioned land offices in the State of Iowa, at the periods hereinafter designated, to wit:

At the land office at Fort Dodge, commencing on Monday, the twenty-sixth day of September next, for the disposal of public lands heretofore unoffered, situated within the following named townships, and parts of townships, viz:

North of the base line and west of the fifth principal meridian:

The N. ½ of section 1, section 2, the north half of section 3, sections 4, 5, 6, 8, 10, 12, 14, 18, 20, 22, 24, 26, 28, 30, 32, 34, & 36, of township 91, of range 24.

Sections 2, 4, 6, 8, 10, 12, 14, 18, 20, 22, 24, 26, 28, 30, 32, 34, and 36, of township ninety-three; sections 2, 4, 6, 8, 10, 12, 14, 18, 20, 22, 24, 26, 28, 30, 32, 34, and 36, of township 95; sections 2, 4, 6, 8, 10, 12,
799 14, 18, 20, 22, 24, 26, 28, 30, 32, 34, and 36, of township 96; sections 2, 4, 6, 8, 10, 12, 14, 18, 20, 22, 24, 26, 28, 30, 32, 34, and 36, of township 97; sections 2, 4, 6, 8, 10, 12, 14, 18, 20, 22, 24, 26, 28, 30, 32, 34, and 36, of township 98, of range 27.

Sections 2, 4, 6, 8, 10, 12, 14, 18, 20, 22, 24, 26, 28, 30, 32, 34, & 36, of township 93; sections 2, 4, 6, 8, 10, 12, 14, 18, 20, 22, 24, 26, 28, 30, 32, 34, and 36, of township 94; sections 2, 4, 6, 8, 10, 12, 14, 18, 20, 22, 24, 26, 28, 30, 32, 34, and 36, of township 95; sections 2, 4, 6, 8, 10, 12, 14, 18, 20, 22, 24, 26, 28, 30, 32, 34, and 36, of township 96; sections 2, 4, 6, 8, 10, 12, 14, 18, 20, 22, 24, 26, 28, 30, 32, 34, and 36, of township 97; sections 2, 4, 6, 8, 10, 12, 14, 18, 20, 22, 24, 26, 28, 30, 32, 34, and 36, of township 98; sections 2, 4, 6, 8, 10, 12, 14, 18, 20, 22, 24, 26, 28, 30, 32, 34, and 36, of township 99, of range 28.

Sections 2, 4, 6, 8, 10, 12, 14, 18, 20, 22, 24, 26, 28, 30, 32, 34, and thirty-six, (36,) of township 93; sections 2, 4, 6, 8, 10, 12, 14, 18, 20, 22, 24, 26, 28, 30, 32, 34, and 36, of township 94; sections 2, 4, 6, 8, 10, 12, 14, 18, 20, 22, 24, 26, 28, 30, 32, 34, and 36, of township 95; sections 2, 4, 6, 8, 10, 12, 14, 18, 20, 22, 24, 26, 28, 30, 32, 34, and 36, of township 96; sections 2, 4, 6, 8, 10, 12, 14, 18, 20, 22, 24, 26, 28, 30, 32, 34, and
800 36, of township 97; sections 2, 4, 6, 8, 10, 12, 14, 18, 20, 22, 24, 26, 28, 30, 32, 34, and 36, of township 98; sections two, 4, 6, 8, 10, 12, 14, 18, 20, 22, 24, 26, 28, 30, 32, 34, and 36, of township 99, of range 29.

Sections 2, 4, 6, 8, 10, 12, 14, 18, 20, 22, 24, 26, 28, 30, 32, 34, & 36, of township 93; sections 2, 4, 6, 8, 10, 12, 14, 18, 20, 22, 24, 26, 28, 30, 32, 34, and 36, of township 94; sections 2, 4, 6, 8, 10, 12, 14, 18, 20, 22, 24, 26, 28, 30, 32, 34, and 36, of township 95; sections 2, 4, 6, 8, 10, 12, 14, 18, 20, 22, 24, 26, 28, 30, 32, 34, and 36, of township 96; sections 2, 4, 6, 8, 10, 12, 14, 18, 20, 22, 24, 26, 28, 30, 32, 34, and 36, of township 97; sections 2, 4, 6, 8, 10, 12, 14, 18, 20, 22, 24, 26, 28, 30, 32, 34, and 36, of township 98; sections 2, 4, 6, 8, 10, 12, 14, 18, 20, 22, 24, 26, 28, 30, 32, 34, and 36, of township 99; sections two, 4, 6, 8, 10, 12, 14, 18, 20, 22, 24, 26, 28, 30, 32, 34, & 36, of township 100, of range 30.

Sections 2, 4, 6, 8, 10, 12, 14, 18, 20, 22, 24, 26, 28, 30, 32, 34, and 36, of township 93; sections 2, 4, 6, 8, 10, 12, 14, 18, 20, 22, 24, 26, 28, 30, 32, 34, and 36, of township 94; sections 2, 4, 6, 8, 10, 12, 14, 18, 20, 22, 24, 26, 28, 30, 32, 34, & 36, of township 95; sections 2, 4, 6, 8, 10, 12, 14, 18, 20, 22, 24, 26, 28, 30, 32, 34, and 36, of township 96; sections 2,
801 4, 6, 8, 10, 12, 14, 18, 20, 22, 24, 26, 28, 30, 32, 34, and 36, of township 97; sections 2, 4, 6, 8, 10, 12, 14, 18, 20, 24, 26, 28, 30, 32, 34, and 36, of township 98; sections 2, 4, 6, 8, 10, 12, 14, 18, 20, 24, 26, 28, 30, 32, 34, & 36, of township 99; sections 2, 4, 6, 8, 10, 12, 14, 18, 20, 22, 24, 26, 28, 30, 32, 34, & 36, of township 100, of range 31.

Sections 2, 4, 6, 8, 10, 12, 14, 18, 20, 22, 24, 26, 28, 30, 32, 34, & 36, of township 93; sections 2, 4, 6, 8, 10, 12, 14, 18, 20, 22, 24, 26, 28, 30, 32, 34, & 36, of township 94; sections 2, 4, 6, 8, 10, 12, 14, 18, 20, 22, 24, 26, 28, 30, 32, 34, & 36, of township 96; sections 2, 4, 6, 8, 10, 12, 14, 18, 20, 22, 24, 26, 28, 30, 32, 34, & 36, of township 97; sections 2, 4, 6, 8, 10, 12, 14, 18, 20, 22, 24, 26, 28, 30, 32. 34, & 36, of township 98; sections 2, 4, 6, 8, 10, 12, 14, 18, 20, 22, 24, 26, 28, 30, 32, 34, & 36, of township 99; sections 2, 4, 6, 8, 10, 12, 14, 18, 20, 22, 24, 26, 28, 30, 32, 34, and 36, of township 100, of range 32.

Sections 2, 4, 6, 8, 10, 12, 14, 18, 20, 22, 24, 26, 28, 30, 32, 34, & 36, of township 94; sections 2, 4, 6, 8, 10, 12, 14, 18, 20, 22, 24, 26, 28, 30, 32, 34, & 36, of township 96; sections 2, 4, 6, 8, 10, 12, 14, 18, 20, 22, 24, 26, 28, 30, 32, 34, & 36, of township 97; sections 2, 4, 6, 8, 10, 12, 14, 18, 20, 22, 24, 26, 28, 30, 32, 34, & 36, of township 98; sections 2,
802 4, 6, 8, 10, 12, 14, 18, 20, 22, 24, 26, 28, 30, 32, 34, & 36, of township 99; sections 2, 4, 6, 8, 10, 12, 14, 18, 20, 22, 24, 26, 28, 30, 32, 34, & 36, of township 100, of range 33.

At the land office, at Sioux City, commencing on Monday, the third day of October next, for the disposal of the public lands heretofore unoffered, situated with the following townships and parts of townships, viz:

North of the base line and west of the fifth principal meridian:

Sections 2, 4, 6, 8, 10, 12, 14, 18, 22, 24, 26, 28, 30, 32, 34, and 36, of township 95; sections 2, 4, 6, 8, 10, 12, 14, 18, 20, 22, 24, 26, 28, 30, 32, 34, & 36, of township 96; sections 2, 4, 6, 8, 10, 12, 14, 18, 20, 22, 24, 26, 28, 30, 32, 34, & 36, of township 97; sections 2, 4, 6, 8 10, 12, 14, 18, 20, 22, 24, 26, 28, 30, 32, 34, & 36, of township 99; sections 2, 4, 6, 8, 10, 12, 14, 18, 20, 22, 24, 26, 28, 30, 32, 34, & 36, of township 100, of range 34.

Township 97, of range 35.

Sections 1 to 6, inclusive; the north ½ of section 7; sections 8 to 12, inclusive; the north ½ of section 13; sections 14, 18, 20, 22, 24, 26, 28,
803 30, 32, 34, & 36, of township 93; township 94 & 97, of range thirty-six.

Sections 2, 4, 6, 8, 10, 12, 14, 18, 20, 22, 24, 26, 28, 30, 32, 34, & 36.

Sections 2, 4, 6, 8, 10, 12, 14, 18, 20, 22, 24, 26, 28, 30, 32, 34, & 36, of township 93; townships 94, 95, and 97, of range 37.

Sections 2, 4, 6, 8, 10, & 12; the north ½ and the S. E. ¼ of section 14, of township 93; sections 2, 4, 6, 8, 10, 12, 14, 18, 20, 22, 24, 26, 28, 30, 32, 34, and 36, of township 94; township 95, except sections 31 & 33, and township 96, of range 40.

Township 98, of range 41.

Townships 96, 97, & 98, of range 42.

Townships 97 and 98, of range 43.

Townships 97 and 98, of range 44.

Townships 97 & 98, of range 47.

Sections 2, 4, 10, 12, 14, 22, 24, 26, and 34, of township 90; sections 2, 4, 6, 8, 10, 12, 14, 18, 20, 22, 24, 26, 28, 30, 32, 34, and 36, of township 91; and fractional townships of 97 & 98, of range 48.

Lands appropriated by law for the use of schools, military, and other purposes, together with the "swamp and overflowed lands," will be excluded from the sales.

The offering of the above lands will be commenced on the days appointed, and will proceed in the order in which they are adver-
804 tised, until the whole shall have been offered, and the sales thus

closed; but no sale shall be kept open longer than two weeks, and no private entry of any of the above lands will be admitted until after the expiration of the two weeks.

Given under my hand at the city of Washington, this 30th day of May, anno Domini one thousand eight hundred and fifty-nine.

JAMES BUCHANAN.

By the President:

JOS. S. WILSON,
Acting Commissioner of the General Land Office.

Notice to pre-emption claimants.

Every person entitled to the right of pre-emption to any of the lands within the townships and parts of townships above mentioned, is required to establish the same to the satisfaction of the register and receiver of the proper land office, and make payment thereof as soon as practicable, after seeing this notice, and before the day appointed for the commencement of the public sales of the lands embracing the tract claimed; otherwise such claim will be forfeited.

JOS. S. WILSON,
Acting Commissioner of the General Land Office.

805 NOTE.—Under the regulations of the Department, as heretofore and now existing, no payment can be made for advertising proclamations, except to such publishers as are specially authorized to publish by the Commissioner of the General Land Office.

(No. 665.)

By the President of the United States:

In pursuance of law, I, James Buchanan, President of the United States of America, do hereby declare and make known that public sales will be held at the under-mentioned land offices, in the State of Iowa, at the periods hereinafter designated, to wit:

At the land office at Fort Dodge, commencing on Monday, the 19th day of November next, for the disposition of the public lands heretofore unoffered, situated within the following townships and parts of townships, viz:

806 North of the base line and west of fifth principal meridian:

Sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, and 35, of township 93; sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, and 35, of township 95; sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, & 35, of township 96; sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, & 35, of township 97; sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, & 35, of township 98, of range 27.

Sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, & 35, of township 93; sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, and 35, of township 94; sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, and 35, of township 95; sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, and 35, of township 96; sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, and 35, of township 97; sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, and 35, of township 98; sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, & 35, of township 99, of range 28.

Sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33,
807 and 35, of township 93; sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, and 35, of township 94; sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, and 35, of township 95; sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, and 35, of township 96; sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, and 35, in township 97; sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, and 35, of township 98; sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, & 35, of township 99, of range 29.

Sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, and 35, of township 93; sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, and 35, of township 94; sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, and 35, of township 95; sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, and 35, of township 96; sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, and 35, of township 97; sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, & 35, of township 98; sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, & 35, of township 99; sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, and 35, of township 100, of range 30.

808 Sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, and 35, of township 93, sections 1, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, and 35, of township 94; sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, and 35, of township 95; sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, and 35, of township 96; sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, & 35, of township 97; sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, and 35, of township 98; sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, & 35, of township 99; sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, and 35, of township 100, of range 31.

Sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, & 35, of township 93; sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, and 35, of township 94; sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, and 35, of township 95; sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, & 35, of township 96; sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, & 35, of township 97; sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, and 35, of township 98; sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, & 35, of township 99; sections 1, 3, 5, 7, 9,
809 sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, and 35, of township 100, of range 32.

Sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, & 35, of township 94; township 95; sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, & 35, of township 96; sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, & 35, of township 97; sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, & 35, of township 98; sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, & 35, of township 99; sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, & 35, of township 100, of range 33.

At the land office at Sioux City, commencing on Monday, the 26th day of November next, for the disposal of the public lands heretofore unoffered, situated within the following townships and parts of townships, viz:

North of the base line and west of the fifth principal meridian:

Sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, & 35, of township 95; sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23,

25, 27 29, 31, 33, & 35, of township 96; sections 1, 3, 5, 7, 9,
810 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, & 35, of township 97; township 98; sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, & 35, of township 99; sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, & 35, of township 100, of range 34.

Townships 98, 99, 100, of range 35; township 98, of range 36; townships 98, 99, & 100, of range 37; townships 98, 99, & 100, of range 38; townships 98, 99, & 100, of range 39; townships 98, 99, & 100, of range 40; townships 99 and 100, of range 41; townships 99 and 100, of range 42; townships 99 and 100, of range 43; townships 99 and 100, of range 44; townships 99 and 100, of range 45; townships 99 and 100, of range 46; townships 99 and 100, of range 47; townships 99 and 100, of range 48; townships 99 and 100, of range 49.

Lands appropriated by law for the use of schools, military, & other purposes, together with the "swamp and overflowed lands," will be excluded from the sales.

The offering of the above lands will be commenced on the days
811 appointed, and will proceed in the order in which they are advertised until the whole shall have been offered, and the sales thus closed; but no sale shall be kept open longer than two weeks, and no private entry of any of the lands will be admitted until after the expiration of the two weeks.

Given under my hand at the city of Washington this 14th day of August, anno Domini one thousand eight hundred and sixty.

JAMES BUCHANAN.

By the President:

JOS. S. WILSON,
Commissioner of the General Land Office.

Notice to pre-emption claimants.

Every person entitled to the right of pre-emption to any of the lands within the townships and parts of townships above-mentioned, is required to establish the same to the satisfaction of the register and receiver of the proper land office, and make payment therefor as soon as practicable after seeing this notice, and before the day appointed for the commencement of the public sales of the lands embracing the tract claimed; otherwise such claim will be forfeited.

JOS. S. WILSON,
Commissioner of the General Land Office.

812 NOTE.—Under the regulations of the Department, as heretofore and now existing, no payment can be made for advertising proclamations, except to such publishers as are specially authorized to publish by the Commissioner of the General Land Office.

813 LXXX. *Commissioner Wilson to Secretary Thompson, September 3rd*, 1860.

GENERAL LAND OFFICE,
September 3rd, 1860.

Hon. J. THOMPSON, *Sec. of Interior.*

SIR: I have the honor to return herewith the communication from W. F. Steiger, esq., of the 10th July last, relative to his application for the certification of certain lands above the Raccoon Fork of the

Des Moines River to the Iowa railroads, and respectfully state that we find no reason therein for a change of our recommendation of the 7th July last; that further proceedings in the matter by the Departments be delayed until after the close of the next session of Congress.

Very respectfully, your ob'd't servant,

JOS. S. WILSON,
Commissioner.

814 LXXXI. *Secretary Thompson to the Commissioner of the General Land Office, September 6th, 1860.*

DEPARTMENT OF THE INTERIOR,
Washington, Sept. 6th, 1860.

SIR: In the absence of any direct application by the governor of the State of Iowa for final action in the certification of certain lands common to the claimed limits of the grant to that State for the improvement of the Des Moines River, and the grants for aid in constructing railroads, my opinion is that it will be proper, as you suggest, to delay action until after the close of the next session of Congress.

The papers enclosed with your letter of the 7th July last and 3d instant, are now returned.

Very respectfully, your obedient servant,

J. THOMPSON,
Secretary.

The COMMISSIONER OF THE GENERAL LAND OFFICE.

LXXXII. *Secretary Thompson to Senator Jones November 3rd,* 1860.

Extract from a letter dated—

DEPARTMENT OF THE INTERIOR,
Washington, November 3rd, 1860.

SIR: I have the honor to acknowledge the receipt of your letter of this date, and have considered the same in connection with the letter of Mr. Steiger, agent of the Dubuque and Sioux City Railroad Company, of the 1st instant, both relating *the* to the certification to the State of Iowa of lists of odd-numbered sections of land within the six and fifteen mile limits of the railroad "from the city of Dubuque to a point on the Missouri River near to Sioux City."

For your information I herewith enclose copies of my letters of the 6th September last to the Commissioner of the General Land Office, and of the 1st of October to Mr. Steiger, and in reply to your letter would state that, as respects those tracts within the limits of the railroad grant which have already been certified to the State of Iowa by my predecessor, under the previous grant of 8th August, 1846, in the absence of a formal and sufficient surrender by the State of all claims under the prior grant, and a direct demand from the State authorities for lists under the later grant, I deem it proper to suspend action at present so far as the claims interfere. The subject of these opposing claims is involved with proposed legislation pending in Congress; and the State authorities still assert the equity of the title which has been recognized by my predecessors, though since declared to be invalid by a decision of the Supreme Court of the United States.

* * * * * * *

Very respectfully, your obedient servant,

J. THOMPSON,
Secretary.

Hon. GEO. W. JONES, of Iowa, *present.*

815 LXXXIII. *Secretary Thompson to Governor Kirkwood, November 3rd, 1860.*

Extract from a letter dated—

DEPARTMENT OF THE INTERIOR,
Washington, November 3d, 1860.

His excellency S. J. KIRKWOOD,
Governor, &c., Des Moines, Iowa:

* * * * * * *

Again I would remark, that, so far as any proposition for congressional aid in behalf the State, was brought to the notice of this Department during the last session of Congress, it was confined, as I understood it, to that portion of the claimed lands which have been heretofore certified by my predecessors, and which has not been included in the lists of lands ordered into market. In respect to that class of lands, I had the honor, in a communication of the 11th June last, addressed to Hon. R. W. Johnson, Chairman of the Committee Public Lands of the United States Senate, to recommend the report to that body, for adoption by Congress, the form of a joint resolution, as follows:

"*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,* That all the title which the United States still retain in the tracts of land along the Des Moines River, and above the Raccoon Forks thereof, in the State of Iowa, which have been heretofore certified to said State improperly by the Department of the Interior as part of the grant by act of Congress approved August 8, 1846, be, and the same is hereby, relinquished to the State of Iowa."

You thus perceive that, so far as my predecessors have acted under the grant of August 8, 1846, I was willing to recommend a confirmation of that action by Congress. I cannot, however, go further.

Very respectfully, your obedient servant,

J. THOMPSON,
Secretary.

816 LXXXIV. *Joint resolution to qui't title to lands in the State of Iowa, approved March 2d,* 1861. (12 *Stat. at Large, p.* 251.)

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That all the title which the United States still retain in the tracts of land along the Des Moines River, and above the mouth of the Raccoon Forks thereof, in the State of Iowa, which have been certified to said State improperly, by the Department of the Interior, as part of the grant by act of Congress, approved August 8, 1846, and which is now held by bona-fide purchasers under the State of Iowa, be, and the same is hereby, relinquished to the State of Iowa.

Approved March 2, 1861.

LXXXV. *Secretary Smith to the Commissioner of the General Land Office, April 10th,* 1862.

(Printed in Exhibit VII to plaintiff's bill. Transcript, p. 102; this record, p. 73.)

LXXXVI. *Commissioner Edmonds to Senator Grimes, April 15th, 1862.*

(Printed in Exhibit VII to plaintiff's bill. Transcript, p. 103; this record, p.74.)

817 LXXXVII. *Governor Kirkwood to Commissioner Edmonds, May 6th, 1862.*

(Printed in Exhibit VII to plaintiff's bill. Transcript, p. 104; this record, p. 74.)

LXXXVIII. *Commissioner Edmonds to Governor Kirkwood, June 26th, 1862.*

(Printed in Exhibit VII to plaintiff's bill. Transcript, p. 105; this record, p. 74.)

LXXXIX. "*An act confirming a land claim in the State of Iowa, and for other purposes,*" *approved July 12th, 1862.* (12 *Stat. at Large, p.* 544, 545.)

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the grant of lands to the then Territory of Iowa, for the improvement of the Des Moines River, made by the act of August 8, 1846, is hereby extended so as to include the alternate sections (designated by odd numbers) lying within five miles of said river, between the Raccoon Forks and the northern boundary of said State; such lands are to be held and applied in accordance with provisions of the original grant, except that the consent of Congress is hereby given to the application of a portion thereof to aid in the construction of the Keokuk, Fort Des Moines and Minnesota Railroad, in accordance with the provisions of the act of the general assembly of the State of Iowa, approved March 22, 1858, and if any of said lands shall have been sold, or otherwise disposed of by the United States before the passage of this act, excepting those released by the United States to the grantees of the State of Iowa, under the joint resolution of March 2, 1862, the Secretary of the Interior is hereby directed to set apart an equal amount of lands within said State to be certified in lieu thereof: *Provided*, That if the said State shall have sold and conveyed any portion of the lands lying within the limits of this grant, the title of which has proved invalid, any lands which shall be certified to said State in lieu thereof, by virtue of the provisions of this act, shall inure to and be held as a trust fund for the benefit of the person or persons respectively whose titles shall have failed as aforesaid.

Approved July 12, 1862.

818 XC. *Joint resolution accepting the grant made by No. LXXXIX, September 11th, 1862.*

Joint resolution accepting the grant of lands made to the State of Iowa, by an act of Congress, approved 13th of July, 1862, entitled "An act confirming a land claim in the State of Iowa, and for other purposes."

Resolved by the general assembly of the State of Iowa, That the grant of lands made by the act of Congress, approved July 13, 1862, entitled

"An act confirming a land claim in the State of Iowa, and for other purposes," be, and the same is hereby, accepted by the State of Iowa, on the terms and conditions in said act contained.

Approved September 11th, 1862.

819 XCI. *Act providing for selecting the lands granted by No. LXXXIX, Sept. 11th, 1862.*

An act to provide for the selection of the lands granted to the State of Iowa by an act of Congress, approved July 13, 1862, entitled "An act confirming a land claim in the State of Iowa, and for other purposes."

Gov. may appoint com'rs to perfect the selection of land granted, &c.

SECTION 1. *Be it enacted by the general assembly of the State of Iowa*, That the governor of the State of Iowa be, and he is hereby, authorized and required to appoint one or more commissioners, whose duty it shall be to do and perform whatever duty may be necessary to perfect the selection of the lands granted to the State by act of Congress approved July 13th, 1862.

Comm'r's duty.

SEC. 2. The said commissioner or commissioners shall, as soon as said lands are selected and set apart to the said State, report the same to the governor, and file complete abstracts in the office of the register of the State land office.

Lands to be held in trust by State. State not to dispose of lands, &c.

SEC. 3. The said land, when selected and reported to the governor, as provided by this act, shall be held by the State in trust for the purposes for which it was granted to
820 the State; but the State shall in no wise dispose of said lands until authorized by further legislation.

Compensat'n of comm'r.

SEC. 4. The commissioners who shall be appointed by the governor under the provisions of this act shall receive the sum of three dollars per day, in full compensation for the time actually employed by them in the performance of such duties as are imposed upon them by the provisions of this act, to be paid out of any money in the treasury not otherwise appropriated.

Take effect.

SEC. 5. This act shall take effect and be in force from and after its publication according to law.

Approved September 11th, 1862.

821 XCII. *Commissioner Edmonds to Governor Kirkwood, September 25th, 1862.*

GENERAL LAND OFFICE,
September 25, 1862.

To his excellency the GOVERNOR OF IOWA.

SIR: I respectfully call your attention to my letter of the 26th June last, requesting you to furnish this office, at your earliest convenience, with a list of the tracts of lands sold by the State of Iowa under the act of Congress approved August 8th, 1846, above the mouth of the Raccoon Forks of the Des Moines River, and now held by bona-fide purchasers, and request compliance therewith as early as practicable.

Very respectfully, your obedient servant.

J. M. EDMUNDS,
Commissioner.

822 XCIII. *List of lands certified by Governor Kirkwood, November 20th, 1862.*

In response to the foregoing letters of the Commissioner, the governor of Iowa, on the 20th of November, 1862, caused to be forwarded to the General Land Office a list, certified by the said governor and by the land commissioner of said State, under the official seal, of all the lands situated above the Raccoon Fork of the Des Moines River which had been certified and approved to the State under said act of August 8th, 1846, and also setting forth that all of said land had been sold and conveyed by said State by deed or patent prior to said 2d March, 1861, as follows:

List of Des Moines River lands above the mouth of the Raccoon Forks sold by the State of Iowa.

Then follows list of about 697 individual sales, as follows:

Dates of patents.	No. of patents.
Feb'y 16, 1853	148
June 1, 1854	29
June 1, 1855	2
July 1, 1858	430
Sept. 1, "	13
Oct. 1, "	1
March 14, 1859	5
April 9, "	3
" 20, "	2
May 23, "	18
" 31, "	44
July 12, "	1
Feb'y 25, 1860	1
	697

	Example.					Date.
	S.	T.	R.	Ac.		
W. ¼ of N. W. ¼ }						
N. E. ¼ of N. W. ¼ }	19	78	24	122. 83	at $1 25	March 25, 1852. Phineas C. Casidy. Patented Feb'y 16, 1853. No. 2,855.

Immediately follows certified copies of joint resolution of the general assembly, approved March 22, 1858, and resolutions of acceptance of Des Moines Navigation and Railroad Company of 15th April, 1858, signed by R. S. Burrows, president Des Moines Navigation and Railroad Company. Certified as a true copy by Elijah Sells, secretary of state, and above set forth.

Then follows a list *of* embracing all lands which *which* had been conveyed by the deeds of the State of Iowa to the Des Moines Navigation and Railroad Company, set out above and executed pursuant to
823 the settlement of 1858, which list was in the following form:

Parts of sec.	Sec.	T.	R.	Acres.	Date of sale.	To whom sold and patented.	Date of patent.	No. of patent.
					May 14, 1855	Des Moines N.& R. R. Co...	May 3, '58	9
					Do	do	do	10
					Do	do	do	11
					May 6, 1856	do	do	9
					Do	do	do	11
					Do	do	do	12
					Do	do	do	13
					Do	do	do	112
					Do	do	do	13
					Do	do	do	14
					No date	do	do	14
					May 14, 1856	do	do	9
					May 6, 1855	do	do	9

(Here follows copy of the general deed from the State of Iowa to the Des Moines Navigation and Railroad Company, dated May 18th, 1858, above set forth.

The said list embraced all the lands situated above Raccoon Forks, mentioned in the patents from the State to said company, including those in question in this suit, and from said list it appears that all the sales to the Des Moines Navigation and Railroad Company were made prior to the date of the railroad grant of May 15, 1856. This list, as appears by indorsement thereon, was received and filed at the General Land Office, December 1, 1862.

Annexed and appended to said list are the following certificates of A. B. Miller, register of the State land office, and Samuel J. Kirkwood, governor of Iowa.)

Copy of the final certificates.

STATE LAND OFFICE, IOWA,
Des Moines, July 22, 1862.

I, A. B. Miller, register of the State land office for the State of Iowa, do hereby certify that the within and foregoing lists are true and exemplifications of the sales and records of patents made out for the "Des Moines River grant," in land certified to the State of Iowa, under the act of August 8th, 1846, for the "improvement of the navigation of the Des Moines River," as shown by the records and plats now on file in this office, giving description of the lands sold, the amount paid therefor, "date of sale," "name of purchaser," to whom patented, date and number of patent—except a part of that sold to the Des Moines Navigation and Railroad Company, the date of which sale is not in this office, but the dates of the patents are shown—and the consideration of this latter class of lands was work upon the improvement of the Des Moines River, upon which the navigation company took lands at $1 25 per acre. These lists include all lands heretofore certified to the State, under the act of 1846, above the mouth of the Raccoon Forks, and includes a copy of a deed made out to the "Des Moines Navigation and Railroad Company," for all these lands to which the State of Iowa had any title.

In testimony whereof I have hereunto set my hand the date above written.

A. B. MILLER, *Register.*

EXECUTIVE OFFICE, IOWA,
Des Moines, July 22, 1862.

I, Samuel J. Kirkwood, governor of the State of Iowa, do hereby certify that the above-named A. B. Miller was duly elected and qualified register of the State land office; that he is, by the laws of the State of Iowa, the custodian of all books and papers relating to the lands of the State, and has charge of the office in which the same are deposited; that his certificate herein is entitled to full faith and credit, and that the above is his genuine signature.

In testimony I have hereunto set my hand, and caused the great seal of the State of Iowa to be hereto affixed, the date above written.

[L. S.] SAMUEL J. KIRKWOOD.

By the governor:

ELIJAH SELLS,
Secretary of State.

824 *XCIV. Act of the general assembly of the State of Iowa, supplementary to the legislation of* 1858. *Approved March 28th,* 1854. (*Session Laws*, 1866, *p.* 131.)

CHAPTER 108.—DES MOINES RIVER LAND GRANT.

An act supplemental to chapter ninety-nine of the laws of the seventh general assembly, approved March 22d, 1858, and relating to the Des Moines River land grant, and for the payment of certain audited claims, and releasing to the United States certain occupied lands included in said grant.

Homestead.

SECTION 1. *Be it enacted by the general assembly of the State of Iowa*, That all the title and interest of the State of Iowa in and to any portions of the lands granted by the act of Congress, approved July 12th, 1862, situated north of township number ninety north, which was entered upon by a head of a family as a homestead or as a pre-emption claim, and who had, prior to the first day of January, 1863, filed in the proper land office, a declaratory statement, and who actually occupied the said land with his family as a homestead on the first day of December last, and has continued to hold and occupy the same, shall be relinquished to the United States upon the condition hereinafter mentioned. The said claimant shall, within ninety days from the taking effect of this act, make due proof before the register of the land office at Fort Dodge, of such filing, entry, and continued occupation, and any person claiming an interest in the said lands, after giving all contesting parties ten days' notice of the time and place, may appear before the register within thirty days after the expiration of the said ninety days, and contest the validity of such claims, and the whole evidence having been reduced to writing and certified to by said register of the land office at Fort Dodge, shall be
825 deposited in said land office, and a complete list of of such claims and the evidence relating thereto, shall be filed in the office of the governor at Des Moines, within one hundred and forty days from the date of the taking

Evidence in writing.

List of claims.

Release to U. S.

effect of this act. The governor shall execute a release of such lands to the United States, when lists of the same, duly certified by the register of the land office at Fort Dodge, shall be furnished him, and he shall be satisfied from the evidence so filed with the register that the said claims have been established in accordance with the provisions of this act: *Provided*, That if any of the said claim-

Fail to perform.

ants shall fail to perfect their claims upon any of the aforesaid lands in the manner required by the laws of the United States relating to pre-emptions and homesteads, then such

State of Iowa.

unclaimed lands shall belong to the State of Iowa, and be held and disposed of as provided by the said act of Con-

Purchase money.

gress, approved July 12th, 1862: *And provided further*, That if any purchase-money shall be paid by said claimants to the United States for such lands, the same shall inure to the benefit of the parties legally entitled thereto.

Deed of release.

SEC. 2. No person or persons, company, or corporation, claiming said lands or any part thereof, shall be entitled to receive a certificate or any other conveyance of said granted lands, until such person or persons, company, or corporation, shall execute and file in the office of the register of the State land office a deed of release to the State of Iowa of the lands described in section one of this act.

Pomeroy. Needham.

SEC. 3. Charles Pomeroy, of Boonsboro, and John R. Needham, of Oskaloosa, are hereby appointed commissioners to classify the lands granted to the State of Iowa by the act of Congress of July 12th, 1862, and it shall be their duty—

Com'rs take oath.

First. To file an oath in the office of the register in such form as shall be prescribed by that officer to discharge fairly and impartially the duties imposed by this act.

Grade lands.

Second. After the filing of said official oath, and as soon as practicable after said lands are certified to the State of Iowa, to arrange said lands with reference to their value in three separate classes or grades; the lands in each class to be as nearly as practicable of equal value.

File lists.

Third. To file in the office of the register lists of the lands in each grade or class.

70,000 acres.

SEC. 4. As soon as said lists are filed in the office of 826 the register of the State land office, it shall be the duty of such register to reserve and set apart of those lands lying in place upon the Des Moines River above township number ninety, seventy thousand acres, taking the same as nearly as practicable from the lands next north of said township: *Pro'ided*, That, in the setting apart of said

S. H. Taft.

seventy thousand acres, ten sections of land upon which S. H. Taft has located a colony, shall be excluded, and the governor is hereby authorized to convey said ten sections of land to said S. H. Taft for not less than one dollar and twenty-five cents per acre, and the money received for the same shall be deposited in the State treasury for the use of

Money deposited.

the Keokuk, Fort Des Moines and Minnesota Railroad Company, when they shall become entitled thereto under the provisions of this act, which land so reserved shall be held to secure the payment of the claims and discharge of existing liabilities against the Des Moines River improvement in the manner hereinafter provided.

Indemnity lands.

SEC. 5. The commissioners hereinbefore named shall set apart from the indemnity lands, so called, fifty-eight thousand eight hundred and thirty acres, one-third from each class or grade to be used, or so much thereof as may be necessary for that purpose by the State, in adjusting the titles of its grantees to lands sold prior to June 9th, 1854, as contemplated by act of Congress, approved July 12, 1862.

Each grade.

240 sections.

SEC. 6. After the lands as granted have been so classified and graded, and the reservations provided for in sections four and five of this act have been set apart by the register, the Keokuk, Fort Des Moines and Minnesota Railroad Company shall select two hundred and forty sections of those remaining, less the ten sections to be conveyed to S. H. Taft, as provided in section four of this act, and shall file in the office of the register a list showing the same. After which a number of sections of said lands equal in value to one-fourth of all the lands, including the two hundred and forty sections to be selected by said company as herein provided, granted to the Keokuk, Fort Des Moines and Minnesota Railroad Company, except the reservation provided for in sections four and five of this act, shall be selected by Charles Pomeroy, who shall cause a list of the same to be filed in the office of the register of the State land office. All of said selections shall be made as nearly as practicable one-half in each case from the lands in place and one-half from the indemnity lands, so called, and in making all of said sel'ctions one-third shall be taken from each of the three grades in which such lands shall be classed.

S. H. Taft.

Pomeroy.

827

Each grade.

Certificate.

SEC. 7. That, upon the filing of certificate in the office of the register of the State land office by the Keokuk, Fort Des Moines and Minnesota Railroad Company, verified by the oath of the president and secretary thereof, showing that such company has forty miles of its road, from the town of Bentonsport up the valley of the Des Moines River, completed and in operation, it shall be the duty of the register to certify to said company the two hundred and forty sections of land selected by said company as above provided; and, upon the presentation of such certificate to the governor, he shall, if satisfied that the above provision has been complied with, issue to said company a patent therefor.

40 miles of railroad.

Governor to patent.

Lands set apart.

SEC. 8. That the lands selected by Charles Pomeroy as above provided for, shall be set apart by the register of the State land office, to be applied in the construction of said railroad from the city of Des Moines to Fort Dodge, and said lands so reserved shall be divided into four equal parcels, one of which shall be certified and patented to said company upon the completion of each fourth in distance of that portion of said road.

Four parcels.

Commissioners abolished.

SEC. 9. Upon the payment or satisfaction by said railroad company of the claims against the Des Moines River improvement, which have been duly allowed and certified by the commissioners, and audited by the register of the State land office, according to an act of the eighth general assembly, approved March 3d, 1860, entitled An act in relation to the Des Moines River improvement and abolishing the office of commissioners thereof, including the amount

paid by the State in accordance with chapter forty-four of
Brown & Allender. the acts of the ninth general assembly to Brown and Allender; also, the amount paid W. C. Drake, in accordance with
Drake. chapter fifty-three of the acts of the eighth general assembly; also, to the estate of E. Mayne, balance for services as commissioner, one hundred and sixteen dollars and eighty
Johnson. cents; to Ed. Johnson balance for similar services, ninety-
Jewett. one dollars and fifty cents; to J. E. Jewett, balance for
Semple & Kinley. similar services, ninety dollars; to Semple and Kinley, council fees, twenty dollars; also, all interest accruing on all or any of said claims as now fixed by law, together with the costs and expenses incurred in grading or classing the lands in said grant, as required by the terms of this act,
Register to certify. the register shall certify to said company the lands set
828 apart and reserved by section four of this act. And the governor shall, if he is satisfied that the foregoing provisions have been complied with, and provided said
Bond. Keokuk, Fort Des Moines and Minnesota Railroad Company shall have filed with the Secretary of State, a bond in the sum of one hundred thousand dollars, with sureties to be
Governor to patent. approved by the governor, conditioned that said R. R. company will pay all just and legal claims against the State of Iowa on account of or growing out of the improvement of the Des Moines River, issue a patent therefor, except for so much as shall have been released to the United States in compliance with the provisions of this act. And upon the payment or satisfaction of any portion of said claims by said company, it shall be entitled to a certificate and patent
Ratio. for a portion of said lands in the ratio of one thousand acres of land for every three thousand dollars of said claims so paid or satisfied.

SEC. 10. The bond provided for in section nine of this act, shall not bind the Keokuk, Fort Des Moines and Minnesota R. R. Company to pay any claims except such as
Keosauqua. Plymouth. Croton. have grown out of contracts for the construction and completion of the works at Keosauqua, Plymouth, and Croton, and which have been allowed by the commissioners appointed under the act of March 3d, 1860, or their successors, or which shall be allowed, not exceeding twenty thousand dollars, within sixty days from the taking effect of this act. All claims not presented within the said sixty
Barred. days shall be forever barred. Said commissioners are au-
Com. to hear. thorized to hear and determine such claims as may be presented to them within the said sixty days, and to fix the time and place of their meeting, and to give thirty days' notice thereof in the Keosauqua Republican and Keokuk Gate City,
Bar in force. as provided in said act of March 3d, 1860: *Provided*, That as to all claims not mentioned in this section, the bar imposed by the act of March 3d, 1860, is to continue in full force.

Assignments. SEC. 11. All assignments of said claims or of any part thereof, shall be filed in the office of the register of the State land office on or before the first day of July next, and no assignment not thus filed shall entitle the holder thereof to any claim in the trust fund provided to pay such claims, and the register or company shall be justified in paying any funds applicable to the payment of said claims,

to any person who appears by the papers on file with or in the claim to be entitled thereto.

Claims to be paid in one year.

829 SEC. 12. In case the said company shall not have paid all the claims mentioned in the ninth section of this act, as follows: At least one-half in amount thereof within one year from the time the certificate of such lands shall be delivered to the State, and the remaining part within one year thereafter, then the register of the State land office shall cause said reserved lands to be appraised so that the prices of the three classes shall average three dollars per acre. He shall thereupon offer the same for sale at public auction, in such parcels as will bring the greatest price, after giving two months' notice of such sale in the "Iowa State Register," the "Keosauqua Republican," and the "F't Dodge Republican:" *Provided*, That in no case shall the lands be sold for less than the minimum price so fixed, unless hereafter directed by the general assembly. At such sale the owners of any of the said claims may bid on such lands, and the register shall receive their claims as aforesaid, receipted as money paid on such bids.

Lands to be appraised.

Advertised.

Claimants may bid.

Shall pay.

SEC. 13. The register shall, from the moneys received from such sale, pay as follows: 1st. The expenses of such classification, appraisement, advertisement, and sale. 2. Sums due the State for moneys advanced or due other parties, as mentioned in section nine of this act. 3. The claims unpaid and not used in the purchase of said lands. And in case there shall not be in his hands moneys sufficient to pay all of said claims, the payments thereon shall be pro rata. And after the application of all the moneys so received, the claimants may enter upon and select any of said lands not disposed of, to the amount of their said unpaid claims, at the minimum price fixed thereon; and the governor shall, in all cases of the above disposition of any of said lands, issue patents therefor. Should any of the said reserved lands remain undisposed of after the payment of such claims, they shall be treated as other lands subject to be certified to said company.

Claimants may select.

Patents for.

Releases from contracts.

SEC. 14. In case the said railroad company shall procure from all persons having valid claims against the Des Moines River improvement, or the State, arising out of contracts for the completion of the locks and dams in said improvement, or for leases, water-rents and other contracts from which future liabilities may arise by reason of said locks and dams not being completed, full releases from all such contracts, claims, and demands, and shall file the same in the office of the register aforesaid, then the said company shall be released from any obligation to complete said

Company released.

830 locks and dams at Croton, Plymouth, and Keosauqua, as provided by section two of said act of March 22d, 1858; and the said company is hereby released from any obligation to complete and keep in repair the lock and dam at Bentonsport. And in case the said company shall expend any sums of money upon any of said works, or in procuring said releases, then, for every three thousand dollars so expended, the register shall certify to said company one thousand acres of the lands above reserved not required to pay

Lands certified on payment of claims.

the claims of section nine of this act, and in the same rates for any less sums so expended.

Govern'r and register.

SEC. 15. Whenever it shall be made to appear to the satisfaction of the governor and the register of the State land office, that, in accordance with any contract with the Keokuk, Fort Des Moines & Minnesota Railroad Company, and for a consideration paid by said company, the completion of either of the locks and dams remaining uncompleted at Croton, Plymouth, and Keosauqua, has been assumed by some proper party, and the State and said company discharged from any further payments therefor, and that the State and said company have been discharged from all liabilities arising out of any contracts for the completion of either of such locks and dams heretofore entered into or assumed by the State as trustee, or out of any and all contracts or leases of water-power heretofore executed or assumed by the State as such trustee, or otherwise, it shall be the duty of the governor and register of the State land office—first, if so requested by such company, to execute to such party as the company shall designate, a conveyance in the name of the State of Iowa, without warranty, of all the interest of the said State in such lock and dam, and in the land appurtenant thereto, and the water-power thereto belonging, and in any material prepared for the construction of such lock and dam; and if any such material shall have been improperly taken possession of by any person, the State or its grantee may replevin the same; that said conveyance shall contain a covenant on the part of the grantee that said dam shall at all reasonable times be kept in condition to pass boats without unnecessary hindrance or delay, and that for boats passed through the locks of such dam, the toll charged shall not exceed the maximum rates prescribed by the contract by the State with the Des Moines Navigation and Railroad Company; second, to certify to said Keokuk, Fort Des Moines & Minnesota Railroad Company, or to such person as it may designate, for every three 831 thousand dollars so paid, one thousand acres of land from the seventy thousand acres reserved by this act, and in the same ratio for sums less than three thousand dollars.

Discharged from liability.

Gov. & register to convey without warranty.

Replevin.

Locks.

Toll charged.

Ratio.

R. R. to complete 20 miles.

SEC. 16. When said railroad company shall, in the manner prescribed in section seven of this act, establish the fact that it has completed and is operating twenty miles of its road, in addition to that for which it shall have received lands of this grant prescribed in this act: *Provided*, The said company shall have then satisfied all the claims mentioned in sections nine and ten of this act, to be evidenced by receipts filed in the office of said register, or by the receipt of the State treasurer, for moneys paid to such treasurer in default of the proper claimants receiving the same, the said company shall be entitled to a certificate and patent for one hundred and twenty sections of said lands, to be selected, as nearly as practicable, one-half from the lands in place, and one-half from the indemnity lands, so-called, and one-third from each of said grades or classes, until there shall remain of the lands within said grant, undisposed of, only

Claims satisfied.

120 sections.

the lands reserved by the preceding sections of this act: *Provided*, That it is also made to appear to the satisfaction of the governor and the register of the State land office, that said road has been constructed over the most practicable route up the valley of the Muchakinock Creek, and that a depot has been established on the line of said road at the point nearest the city of Oskaloosa, and on the east side of said creek, or that the Mahaska County Railroad Company has consented to a different route and a different point for the location of said depot.

Depot at Oskaloosa.

SEC. 17. When the Keokuk, Fort Des Moines and Minnesota Railroad Company shall, in like manner, have established the fact that it has completed and is operating its road one-fourth of its distance between the city of Des Moines and Fort Dodge, it shall be entitled to a certificate and patent for one-fourth of the lands reserved by section eight of this act; and upon the completion of each additional one-fourth of said road between Des Moines and Fort Dodge, said company shall be entitled to receive a certificate and patent for one-fourth of the lands so reserved: *Provided, however*, That The railroad company building westwardly from McGregor shall have the right of way for their road across the lands embraced in this act, and the same is hereby granted to said company: *Provided further*, That the State shall, in no event whatever, be liable to said Keokuk, Fort Des Moines & Minnesota Railroad Company, or to any of its grantees, or any other persons to whom lands may be sold or patented under the provisions of this act, for any failure of title to any of the lands so sold or patented.

One-fourth distance from Des Moines to Ft. Dodge.

McGregor R. R. to have right of way.

Failure of title.

832

SEC. 18. The time in which the first seventy-five miles of the Keokuk, Fort Des Moines & Minnesota Railroad, from the town of Bentonsport up the valley of the Des Moines River, shall be completed, is hereby extended to the first day of May, 1865, after which the said company is required to build and equip thirty-three miles of its road for each year for five years, and the remainder of the whole line within three years thereafter, or on the first day of May, 1874; and, in case of a failure to so build and equip said road, the lands then remaining uncertified to said company shall belong to this State, to be disposed of as provided by the act of Congress of July 12th, 1862, and the laws of this State.

Time extended.

SEC. 19. The commissioners hereinbefore named shall each receive, as compensation for services rendered in the discharge of their duties imposed by this act, the sum of three dollars per day for the number of days engaged therein, and their necessary expenses; and the bills therefor shall be audited by the register of the State land office, and paid by the Keokuk Fort Des Moines & Minnesota Railroad Company. If either of said commissioners shall neglect or refuse to discharge the duties imposed by this act, the governor shall appoint some competent person to act in his place.

Pay of commissioners.

Gov. appoint.

SEC. 20. The said Keokuk, Fort Des Moines and Minnesota Railroad Company shall assent to and accept the provisions of this act by a written instrument under the seal of

Sec'y of state. Accept in writing.

said corporation with the signature of the proper officers, before any lands shall be patented to them by the governor, as provided by this act, which said acceptance shall be filed in the office of the secretary of state, and be by the secretary recorded in the book by him kept for the recording of articles of association. Said company accepting the provisions of this act, shall at all times be subject to all the rules and regulations, and all the restrictions and conditions, not inconsistent with this act, provided in an act passed March 3d, 1860, an act passed March 22d, 1858, and an act passed July 14th, 1856, by the general assembly of the State of Iowa.

Take effect.

SEC. 21. This act being deemed of immediate importance, shall take effect and be in force from and after its publication in the Iowa State Register and the Iowa Homestead, newspapers published in Des Moines.

Approved March 28th, 1864.

I certify that the foregoing act was published in the Iowa State Register April 20th, A. D. 1864, and in the Iowa Homestead April 20th, A. D. 1864.

JAMES WRIGHT, *Secretary of State.*

833 XCV. *Commissioner Edmonds to Secretary Usher, February 23d, 1863.*

GENERAL LAND OFFICE, *February 23d*, 1863.

SIR: Herewith I have the honor to lay before you a map exhibiting that portion of the route of the Des Moines improvement interest, as claimed, north of the Raccoon, under the original grant by act of 8th August, 1846, vol. 9, page 77; and also the lines of three railroads which traverse the same from east to west, in virtue of the railroad grant to that State by act of 15th May, 1856, vol. 11, page 9, and, in reference to the matter, respectfully submit the following:

1st. Under a construction given to the said Des Moines grant of 8th August, 1846, there was certified, conditionally, by your predecessors tracts above the Raccoon Forks, amounting in aggregate to, acres..	271, 572. 24
But, in the case of the Dubuque and Pacific Railroad Company vs. Litchfield, 23 Howard, the Supreme Court settled the principle whereby the Des Moines improvement claim above the Raccoon Forks, under said act of 8th August, 1846, was set aside and rejected.	
2d. The State of Iowa thereupon came forward, under the railroad grant, by act of 15th May, 1856, vol. II, page 9, and selects, of the same lands mentioned under the first head, the quantity of, acres	202, 509. 44
Leaving an area of said Des Moines selections not interfered with by railroads of, acres	69, 062. 80

The railroad selections thus made, and entered in lists Nos. 33 to 42, inclusive, herewith embrace "sections in place" and "indemnity" selection for the "Dubuque and Sioux City," the "Iowa Central Air-line," the "Mississippi and Missouri Railroads," according to Schedule B herewith.

834 The conflict of these railroad selections with the Des Moines was presented to your predecessor in report dated March 18, 1862, in connection with the joint resolution approved March 2, 1861, (Statutes, 1860–1, page 251,) which declares "that all the title which the United States still retain in the tracts of land along the Des Moines River, and above the mouth of the Raccoon Forks thereof, in the State of Iowa, which have been certified to said State improperly by the Department of the Interior as part of the grant by act of Congress, approved August eight, eighteen hundred and forty-six, and which is now held by the bona-fide purchasers under the State of Iowa, be, and the same is hereby, relinquished to the State of Iowa."

Secretary Smith, upon said report, ruled, under date 10th April, 1862, that "such of the lands as are embraced in the act making the railroad grant, approved May 15, 1856, are to be disposed of according to the terms of that act, and that without any regard to the fact of their having been certified under the act of 8th August, 1846;" and further directed that, "after carefully satisfying the demands of the State embraced by that act, so much of the residue of the lands north of the mouth of the Raccoon Forks as were certified under the supposed grant of August 8, 1846, and which the State of Iowa had sold to bona-fide purchasers prior to 2d March, 1861, wi l be also certified to the State of Iowa."

Now, in regard to this latter part of Secretary Smith's ruling, it is proper here to invite attention to the fact that the sales thus alluded to by him, and referred to in the joint resolution of 2d March, 1861, as made by the State of Iowa to certain purchasers under the transcripts certified under said erroneous construction of the act of 8th August, 1846, for land above the Raccoon Forks, are reported as embracing all the lands thus "improperly" certified for the Des Moines improvement above the said Raccoon Forks.

In this connection it will be observed that, in the act of 12th July, 1862, (Statutes, page 543,) extending the Des Moines improvement to the northern boundary of Iowa, and providing for indemnity to that improvement interest, where the land had been sold by the United States, there is an exception made as to those released to the vendees of Iowa by said joint resolution, coupled with an express stipulation to this effect, "that if the said State shall have sold and conveyed any portion of the lands lying within the limits of this grant," (by act of 12th July, 1862,) "the title of which has proved invalid, any lands which shall be certified to said State in lieu thereof, by virtue of the provisions of this act, shall inure to, and be held as a trust fund for the benefit of, the person or persons, respectively, whose titles shall have failed as aforesaid."

Now, in submitting these railroad lists for your consideration, in view of the application for your approval thereof, the question arises whether, under said ruling of your predecessor, these lists shall be approved to the State of Iowa as railroad lands, without reference to said sales, for which the said act 12th July, 1862, provides an indemnity fund where they prove invalid, or shall terms of saving and exception, in respect to said sales, be inserted in said transcripts.

Should it be determined by you that such terms are not required, in view of the indemnity stipulation above mentioned, the lists, as they now stand, are before you for approval; but, if otherwise, it is respectfully suggested that you direct the insertion of such terms, before approval, as the nature of the case, in your judgment, may require.

3d. There is another important matter to be considered in the prem-

ises, and that is the force and effect of the said act of 12th July, 1862, in so far as the legal requirement is concerned commanding the Department to grant indemnity to that improvement for lands sold or disposed of by the United States prior to the passage of said act, the Iowa sales excepted. The mode of dealing with this matter is presented in the report from this office, dated October 27, 1862, as approved by Secretary Smith, November 3, 1862; and the principles laid down in that report and ruling will, consequently, govern this office in the adjustment of the extension interest by said act of 12th July, 1862, unless otherwise directed by you.

With great respect, your obedient servant,

J. M. EDMUNDS,
Commissioner.

Hon. J. P. USHER,
Secretary of the Interior.

835 XCVI. *Assistant Secretary Otto to the Commissioner of the General Land Office, April 7th, 1863.*

DEPARTMENT OF THE INTERIOR, *April 7th*, 1863.

SIR: Your report of the 23d February last in regard to the proper measures for carrying into effect the act of Congress approved July 12th, 1862, by which the grant for the improvement of the Des Moines River was extended, has been carefully considered in connection with your report of the 27th October last upon the same subject.

The Secretary instructs me to state that, after mature deliberation and examination of the additional exhibits filed since your report was received, he concurs in the views you have expressed. He has accordingly approved the lists of lands enuring to the State of Iowa under the act of Congress of 15th May, 1856, which accompanied your report, and the same are now returned to your office, that the same usual transcripts may be furnished to the governor.

The argument of Mr. Mason, and the communication of Mr. Steiger, and its enclosures, which have been received here whilst the matter has been pending, are also herewith transmitted.

I am, sir, very respectfully, your obedient servant,

W. T. OTTO,
Assistant Secretary.

The COMMISSIONER OF THE GENERAL LAND OFFICE.

836 XCVII. *The record in the case of Walcott, plaintiff in error, v. The Des Moines Navigation and Railroad Company.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the circuit court of the United States for the southern district of New York, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court before you, or some of you, between Samuel G. Wolcott, plaintiff, and The Des Moines Navigation and Railroad Co., defendants, a manifest error hath happened, to the great damage of the said Samuel G. Wolcott, plaintiff, as is said, and as appears by his complaint; we, being willing that such error, if any hath been, should be duly corrected, and full and speedy

justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the justices of the Supreme Court of the United States at the Capitol in the city of Washington, together with this writ, so that you have the same at the said place, before the justices aforesaid, on the first Monday of December next, that, the record and proceedings aforesaid being inspected, the said justices of the Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States ought to be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this 21st day of February, in the year of our Lord one thousand eight hundred and sixty-five, and of the independence of the United States the eighty-ninth.

KENNETH G. WHITE,
Clerk of the Circuit Court of the United States of America for the Southern District of New York, in the Second Circuit.

SAMUEL G. WOLCOTT
vs.
THE DES MOINES NAVIGATION AND RAILROAD COMPANY.

By virtue of the within writ of error, and in obedience thereto, I, Kenneth G. White, clerk of the circuit court of the United States for the southern district of New York, do hereby certify and return the judgment and proceedings in the case in the writ within mentioned, and that the following pages, numbered from one to 34, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the above-entitled case, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this 22d day of November, in
837 the year of our Lord one thousand eight hundred and sixty-five, and of the independence of the said United States the ninetieth.

[SEAL.] KENNETH G. WHITE, *Clerk.*

Allowed Nov. 13, 1865.

CHA'S L. BENEDICT.

Filed Nov. 13, 1865.

Pleas in the circuit court of the United States for the southern district of New York, held at the United States circuit court rooms, in the city of New York, in said district, of the term of April, in the year of our Lord one thousand eight hundred and sixty-five.

Witness the Honorable Samuel Nelson, justice of the Supreme Court of the United States.

KENNETH G. WHITE, *Clerk.*

SOUTHERN DISTRICT OF NEW YORK, *ss:*

The Des Moines Navigation and Railroad Company, being a corporation created by and under the laws of the State of Iowa, and organized and residing in said State of Iowa, were summoned to answer Samuel

G. Wolcott, a citizen of said State of New York, of a plea of breach of covenent; and thereupon the said Samuel G. Wolcott, plaintiff, by Jasper W. Gilbert, his attorney, complains of the said The Des Moines Navigation and Railroad Company, defendants, of a plea of breach of covenant, for that, whereas, heretofore, to wit, on the 8th day of August, in the year of our Lord one thousand eight hundred and fifty-nine, at Des Moines, in the said State of Iowa, to wit, at the city of New York, in the said southern district of New York, by a certain deed-poll then and there made by the said defendants, which said deed-poll, sealed with the seal of the said defendants, the plaintiff now brings into court here, the date whereof is the day and year aforesaid, it was witnessed: That the said defendants, in consideration of the sum of three thousand and forty dollars, to them in hand paid by the said plaintiffs, did thereby grant and convey to the said plaintiff the following tract of land in said State of Iowa, to wit, in Webster County: The east half of section seventeen, in township eighty-eight, range twenty-seven, containing three hundred and twenty-acres; and the said defendant, in and by the said deed-poll then and there, in consideration of the moneys aforesaid, did warrant the title of said land against all persons whomsoever, and did thereby covenant to and with the said plaintiff that the said defendfendants then had, and that the said plaintiff, by reason of the said deed-poll did and would receive and take, a good and perfect title in fee to the said tract of land, as by the said deed-poll, reference being thereto had, will more fully and at large appear; yet the said plaintiff in fact saith that the said defendants then and there had no title whatever to the said tract of land, nor any part thereof, and that the said plaintiff did not then or there, or at any time afterwards, by reason of the said deed-poll, or otherwise, receive, obtain, or take any title whatsoever to the said tract of land, or any part thereof; but that the said defendants, to fulfill their said warranty of the title to said land, and to cause the said plaintiff to receive, obtain, or take a good and perfect title in fee to the said tract of land, although often requested so to do by the said plaintiff, have hitherto wholly neglected and refused, and still do neglect and refuse, of all of which the said defendants had notice, and so the said plaintiff in fact saith that the said defendants, although often requested, &c., have not kept the said covenants so by them made as aforesaid, but have broken the same, to the damage of said plaintiff of ten thousand dollars, and thereof the said plaintiff brings his suit, &c.

And the said defendants, by W. & C. Tracy & Tallmadge, their attorneys, come and defend the wrong and injury when, &c.; and as to the supposed breach of covenant above assigned and alleged by the said plaintiff, they, the said defendants, say that the said plaintiff ought not to have or maintain his aforesaid action thereof against them, the said defendants, because they say that they, the said defendants, before and at the time of the making of the said indenture in the said plaintiff's declaration above mentioned, were seized in fee of the said tract of land, and did then and there by the said indenture convey to the said plaintiff a good and perfect title in fee to the same; and this the said defendants are ready to verify. Wherefore the said defendants pray judgment if the said plaintiff ought to have or maintain his aforesaid action thereof against them, &c. And for a further plea in this behalf the said defendants, by leave of the court here for the purpose first had and obtained, according to the form of the statute in such case made and provided, say that the said plaintiff ought not to have or maintain his aforesaid action thereof against them, because, they say, that

838 the said defendants, after the making of the said indenture in the said declaration mentioned, and before the commencement of this suit, to wit, on the first day of August, 1862, acquired and took a title and estate in fee in the said tract of land, which said last-mentioned title and estate, by the common law of the State of Iowa and also by the statute of the State of Iowa, did forthwith enure to & vest in the said plaintiff, as the grantee of the said defendants, by the said indenture; and by means of the premises the said plaintiff, before the commencement of this suit, did receive and take good and perfect title in fee to the said tract of land, of all which the said plaintiff had notice, without this, that the said plaintiff has suffered any damage by means of anything in the said declarations mentioned; and this the said defendants are ready to verify. Wherefore they pray judgment if the said plaintiff ought to have or maintain his aforesaid action thereof against them, &c.

And the plaintiff, by his attorney aforesaid, as to the said plea of the said defendants, by them first above pleaded, says that he, the said plaintiff, ought not, by reason of anything in that plea alleged, to be barred from having or maintaining his aforesaid action, because
839 he says, that the said defendants, at the said time, when, &c., were not seized in fee of the said tract of land, nor did they convey to plaintiff any title thereto in any manner and form as in that plea in that behalf alleged; and this the said plaintiff prays may be inquired of by the country, &c.

And the said defendants do the like.

And the said plaintiff, by his attorney aforesaid, and to the said plea of the said defendants, by them secondly above pleaded, says that he, the said plaintiff, ought not, by reason of anything in that plea alleged, to be barred from having or maintaining his aforesaid action thereof, because he says that the said defendants did not, at the said time, when, &c., acquire or take any title or estate, nor did such supposed title or estate vest in the said plaintiff, nor did the plaintiff receive or take any title whatsoever in manner and form as in that plea alleged; and this the said plaintiff may be inquired of by the country, &c.

And the said defendants do the like.

Therefore, it is ordered that the issues above joined be tried at the next term of the said circuit court, to be held at the court-rooms in said district above mentioned, commencing on the third Monday of
840 October next, the same day as given to the parties aforesaid.

Afterwards, to wit, on the 27th day of October, in the term of October, in the year of our Lord one thousand eight hundred and sixty, five, in the said circuit court, at the court-room thereof, in the city of New York, in said southern district of New York, before the Hon. Samuel Nelson, a justice of the Supreme Court of the United States, come the parties aforesaid, by their attorneys aforesaid, and the jurors of the jury being summoned, also came, who to speak the truth, in the matter aforesaid in issue, being chosen, tried, and sworn, say upon their oaths, that the defence by the said defendants above pleaded is true; and they find and return a general verdict in favor of the defendants aforesaid.

"Therefore, it is considered by the court here that the said plaintiff take nothing by his said action, but that he be in mercy, &c., and that the said defendants go thereof without day, &c. And it is further con-

sidered that the said defendants recover against the plaintiff the sum of twenty-seven dollars and thirty cents for their costs & charges
841 in and about their defence in this behalf expended, and that the said defendants have execution thereof."

Judgment signed this 31st day of October, A. D. 1865.

R. E. STILWELL,
Deputy Clerk.

(Indorsed:) U. S. circuit court for the southern district of New York. The Des Moines Navigation and Railroad Company ads. Samuel G. Wolcott. Judgment-roll. W. & C. Tracy & Tallmadge, defendant's attorneys. Filed October 31st, 1865.

Bill of exceptions.

U. S. circuit court, southern district of New York.

SAMUEL G. WOLCOTT
vs.
THE DES MOINES NAVIGATION AND RAILROAD Company.

This action, being at issue upon the declaration, pleas, and replications, was brought to trial and tried at a term of this court held at the city of New York, in the southern district of New York, before the Honorable Samuel Nelson, a justice of the Supreme Court of the United States, held in October, 1865, and the same was tried with a jury.

The plaintiff's counsel, to maintain the issue on his part, gave evidence that the plaintiff is a citizen of the State of New York, and a resident thereof, and was so at and before the commencement of this suit, and that the defendants are a corporation formed and existing by and under the laws of the State of Iowa, and residing in the State of Iowa, and that the defendants executed to the plaintiff a certain deed, which deed was produced and given in evidence, being as follows:

For and in consideration of three thousand and forty dollars, the Des Moines Navigation and Railroad Company, (a corporation organized under the laws of the State of Iowa,) doth hereby grant and convey to Samuel G. Wolcott, of Utica, State of New York, the following tracts of land in the State of Iowa, to wit, in Webster County: The east half of section seventeen, in township eighty-eight, range twenty-seven, containing three hundred and twenty acres; and the said Des Moines Navigation and Railroad Company doth hereby warrant the title against all persons whomsoever.

In witness whereof Edwin C. Litchfield, president, and N. F. Higbie, treasurer of said company, having been hereunto duly authorized, have hereunto set their hands and affixed the seal of said company this first day of August, in the year one thousand eight hundred and fifty-nine.

[SEAL.] EDWIN C. LITCHFIELD, *President.*
N. T. HIGBIE, *Treasurer.*

The said deed bore the usual certificate of the due acknowledgment and proof thereof, under the hand and seal of a commissioner for Iowa, on the 19th day of August, 1859.

The plaintiffs claimed to recover the amount of the consideration-money mentioned in said deed, with interest, and thereupon rested his case.

842 The said grant was fully accepted by the State of Iowa for the purpose contemplated in said act, and everything was done on the part of the State necessary to perfect its title under the act.

Agents were afterwards duly appointed by the governor of the State, who selected the sections designated by odd numbers throughout the whole extent of the grant. (The selections thus made embraced all of the sections of the public lands designated by odd numbers then remaining unsold and not otherwise disposed of, incumbered, or appropriated, lying and being in said Territory or State of Iowa, within a strip of five miles in width on each side of said river.

843 The defendant's counsel, to maintain the issue on their part, gave in evidence the following matters, namely:

On the 8th August, 1846, the Congress of the United States passed an act, of which the following is a copy:

[An act granting certain lands in the Territory of Iowa, to aid in the improvement of the navigation of the Des Moines River, in said Territory, approved August 8th, 1846. Referred to in No. 1 above.]

844 *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That there be, and hereby is, granted to said Territory of Iowa, for the purpose of aiding said Territory to improve the navigation of the Des Moines River from its mouth to the Raccoon Fork (so-called) in said Territory, one equal moiety, in alternate sections, of the public lands, (remaining unsold and not otherwise disposed of, incumbered, or appropriated,) in a strip five miles in width on each side of said river, to be selected within said Territory by an agent or agents to be appointed by the governor thereof, subject to the approval of the Secretary of the Treasury of the United States.

SECTION 2. *And be it further enacted*, That the lands hereby granted shall not be conveyed or disposed of by said Territory, nor by any State to be formed out of the same, except as said improvements shall progress—that is, the said Territory or State may sell so much of said lands as shall produce the sum of thirty thousand dollars, and then the sale shall cease until the governor of said Territory or State shall certify the fact to the President of the United States that one-half of said sum has been expended upon said improvements, when the said Territory or State may sell and convey a quantity of the residue of said lands sufficient to replace the amount expended; and thus the sales shall progress as the proceeds thereof shall be expended, and the fact of such expenditure shall be certified as aforesaid.

SECTION 3. *And be it further enacted*, That the said river Des Moines shall be and forever remain a public highway for the use of the Government of the United States, free from any toll or other charge whatever for any property of the United States or person in their service passing through or along the same: *Provided always*, That it shall not be competent for the said Territory or future State of Iowa to dispose of said lands, or any of them, at a price lower than for the time being shall be the minimum price for other public lands.

SECTION 4. *And be it further enacted*, That whenever the Territory of Iowa shall be admitted into the Union as a State, the lands hereby granted for the above purpose shall be and become the property of said State for the purpose contemplated in this act, and for no other: *Provided*, The legislature of the State of Iowa shall accept the said grant for the said purpose.

Approved August 8th, 1846.

The said grant was fully accepted by the State of Iowa for the purpose contemplated in said act, and everything was done on the part of the State necessary to perfect its title under the act.

Agents were afterwards duly appointed by the governor of the State, who selected the sections designated by the odd numbers throughout the whole extent of the grant. (The selections thus made embraced all of the sections of the public lands designated by odd numbers then remaining unsold and not otherwise disposed of, incumbered, or appropriated, lying and being in said Territory or State of Iowa, within a strip of five miles in width on each side of said river Des Moines from its mouth to its source at or above the northern boundary of the State.) The selection by odd numbers was approved by the Secretary of the Treasury of the United States.

The lands mentioned in the declaration in this suit are a part of the lands thus selected and approved. They are within the limits of what was the Territory of Iowa on the 8th day of August, 1846, and are within five miles of the Des Moines River, but they are situated above the Raccoon Fork of said river, and are not between said Raccoon Fork and the mouth of said river.

On the 24th of February, 1847, the general assembly of the State of Iowa provided for the election of a board of public works, consisting of a president, secretary, and treasurer. To this board the whole subject of receiving and managing the lands and providing for the construction of the improvement was committed. On the (2d) second of August, (1847,) eighteen hundred and forty-seven, the board was duly elected, and was fully organized and went into operation on the (22d) twenty-second of September, following. On the (23d) twenty-third of February, (1848,) eighteen hundred and forty-eight, the Commissioner of the General Land Office wrote to the board of public works as follows:

[The original paper here sets out the letter of Commissioner Young to Corkery, secretary of the board of public works, of Feb. 23d, 1848, No. IX hereof.]

On the (19) nineteenth of June, (1848,) eighteen hundred and forty-eight, without any notice of a change of opinion, a proclamation was issued, signed by the President and countersigned by the Commissioner of the General Land Office, ordering into the market some of the lands which lay above the Raccoon Fork, and which would belong to the State according to the rule laid down in the aforesaid letter of the (23) twenty-third of February, (1848,) eighteen hundred and forty-eight. The sale was to take place on the (16) sixteenth of October, 1848.

On the (18) eighteenth of September, (1848,) eighteen hundred and forty-eight, the board of public works, through its secretary, wrote to the Commissioner of the General Land Office as follows:

[The letter of Cha's Corkery, secretary, to Commissioner Young, September 18th, 1848, printed in Exhibit VII to the plaintiff's bill, on p. 45 of this record, and referred to above in No. X.]

To this letter no reply was returned. On the same day the following protest was sent to the land office at which the sale was ordered to take place, for the purpose of being filed therein:

[The letter of Cha's Corkery, secretary, to C. Neely, register,
845 September 18th, 1848, printed in Exhibit VII of plaintiff's, on p. 46 of this record, and referred to above in No. XI.]

The following letter was written by the Senators and Representatives of Iowa, on the day of its date:

[The letter of A. C. Dodge, George W. Jones, Shepherd Leffler, and W'm Thompson, to Hon. R. J. Walker, January 8th, 1849, printed in Exhibit VII to plaintiff's bill, on p. 46, of this record, and referred to above in N' XII.]

The following was the response of the Secretary:

[The letter of R. J. Walker, Sec. of Treasury, to A. C. Dodge, G. W. Jones, S. Leffler, and W. Thompson, dated March 2nd, 1849, printed in Exhibit VII of plaintiff's bill, on p. 48 of this record, and referred to above in No. XIII.]

846 On the same day the Secretary transmitted a copy of the above letter to the Commissioner of the General Land Office, with the following order:

[Letter of R. J. Walker, Secretary, to R. M. Young, Commissioner, March 2nd, 1849, set out as No. XIV above.]

On the 1st of June, (1849,) eighteen hundred and forty-nine, the Commissioner of the General Land Office wrote as follows to the land office at Iowa City:

[Letter of Richard M. Young, to the register and receiver at Iowa City, June 1st, 1849; No. XV above.]

The reply to said letter was received at the General Land Office, in Washington, where it has since remained on file, as follows:

[Letter of Bowen, register, and Morris, receiver, to the Commissioner of the General Land Office, June 16th, 1849; No. XVI above.]

The foregoing letter was filed and indorsed as follows: Acknowledges the receipt of Commissioner's letter of the 1st inst., directing the odd sections above the Raccoon Fork of the Des Moines River to be withheld from sale.

On the nineteenth of December, 1849, the following letter was written by the Commissioner of the General Land Office to Jesse Williams, esq., the then secretary of the board of public works:

[Letter of Commissioner Butterfield to Jesse Williams, December 19th, 1849, printed in Exhibit VII to plaintiff's bill, on page 49 of this record, and referred to in No. XVIII above.]

847 On the 14th January, 1859, the Commissioner of the General Land Office made a report to the Secretary of the Interior of the amount of land which had been granted to the several States, respectively, for internal improvements.

The amount charged against Iowa in the list, is 825,078 acres, and the following note is thereto appended: "This amount, in accordance with the decision of the Secretary of the Treasury of the 2d of March, (1849,) eighteen hundred and forty-nine, will be increased by the unadjusted portion of the grant for the improvement of the Des Moines River, situated between the Raccoon Fork and the source of said river, estimated to contain about 900,000 acres.

On the 13th of March, 1850, the Commissioner of the General Land Office submitted to the Secretary of the Interior three several lists of land, the first of which had the following heading:

No. 1, showing the tracts falling within the limits of the Des Moines grant above the Raccoon Fork, &c., under the decision of the Secretary of the Treasury of March 2d, 1849.

On the 6th of April, 1850, the Secretary of the Interior, who now had the supervision of the General Land Office, made the following decision:

"The letter of Secretary Ewing to the Commissioner of the General

Land Office, April 6th, 1850, printed in Exhibit VII to plaintiff's bill, on page 49 of this record, and referred to in No. XXI above.]

On the 14th of April, 1850, the Senators and Representatives of Iowa protested against this decision, and appealed therefrom to the President. He referred the matter to the Attorney General, (Mr. Johnson,) who, on the 19th of July, 1850, made his report, giving it fully as his opinion that, by the terms of the grant itself, it extended along the Des Moines River up to its very source.

Previous to the promulgation of this opinion President Taylor died, and a new cabinet was formed not long afterwards and before any further action was taken upon this matter. Instead of giving effect to the opinion of Mr. Johnson, the question was submitted anew to the Attorney General, (Mr. Crittenden,) who, on the 30th of June, 1851, decided that, in his opinion, the grant did not extend above the Raccoon Fork.

The Secretary of the Interior, Alex. H. H. Stuart, at first (26th of July, 1851,) concurred in this opinion, but afterwards consented to bring the whole matter before the President and Cabinet, who made a decision, as indicated in the following letter:

[Letter of Secretary Stuart to the Commissioner of the General Land Office, Oct. 29th, 1851, printed in Exhibit VII to plaintiff's bill, on page 50 of this record, and referred to in No. XXXIV above.]

848 On the following day three lists of lands were prepared in the General Land Office, the heading of which will show their respective purposes, and are as follows:

List No. 1, showing the tracts falling within the limits of the Des Moines grant above the Raccoon Fork of the Des Moines River, so far as the surveys have extended, under the decision of the Secretary of the Treasury of 3d March, 1849, that such grant extended to the north boundary of the State.

List No. 2, showing tracts disposed of within those limits in the interval between the date of one of the previous orders limiting the grant, and one of those extending it above the fork.

List No. 3, showing the vacant lands subject to the claim of the State.

The third of these lists was presented to the Secretary of the Interior for his approval, to which he appended the following explanatory statement:

DEPARTMENT OF THE INTERIOR,
October 30th, 1851.

The selections embraced in the within list (No. 3) are hereby approved, in accordance with the view expressed in my letter of the 29th instant to the Commissioner of the General Land Office, subject to any rights which may have existed at the time the selections were made known to the Land Office by the agents of the State, it being expressly understood that this approval conveys to the State no title to any tract or tracts which may have been sold or otherwise disposed of prior to the receipt by the local land officers of the letter of the Commissioner of the General Land Office communicating the decision of Mr. Secretary Walker, to the effect that the grant extended above the Raccoon Fork.

ALEX. H. H. STUART, *Secretary.*

The following amounts of land were, at different times, approved and certified to the State of Iowa, under this grant, all lying above the Raccoon Fork:

October 30th, 1851	81,707.93 acres.
March 10th, 1852	143,908.37 "
December 17th, 1853	33,142.43 "
December 30th, 1853	12,813.51 "
	271,572.24

Among the lands so certified and approved, were the lands mentioned in the pleadings in this suit.

The following in the heading of the list, which was approved by the Secretary of the Interior on the 17th December, 1853, together with the terms of approval; a similar heading and approval was appended to the list approved on the 30th of the same month:

A list showing the vacant lands in the odd-numbered sections above the Raccoon Fork, and within five miles of the Des Moines River, so far as the surveys have progressed, falling to the State of Iowa under the act of the 8th of August, 1846, as construed by the Secretary of the Treasury in his letter of the 2d of March, 1849, and of the Secretary of the Interior of the 29th October, 1851, which have not heretofore been approved.

Which list was approved in these words:

" DEPARTMENT OF THE INTERIOR,
" *December* 17, 1853.

" The selections in the within list are hereby approved to the State of Iowa, under the act of the 8th of August, 1846, without prejudice to the rights, if any there be, of other parties.

" R. McCLELLAND, *Secretary.*"

On the 21st of March, 1856, the Commissioner of the General Land-Office decided that the grant was limited to the Raccoon Fork. The matter was then brought anew before the Secretary of the Interior, and was by him referred to the Attorney General.

The Attorney General (Cushing) replied to Secretary McClelland in an elaborate opinion, dated 29th May, 1856, in the course of which he said:

849 [The extract from the opinion of the Attorney General quoted in this bill of exceptions will be found in Exhibit VII to plaintiff's bill, on pages 53 of this record.]

Subsequently, application was made through Hon. Reverdy Johnson, in behalf of the Des Moines Navigation and Railroad Company, to the Secretary of the Interior, to issue patents for the lands which had been certified and approved to the State of Iowa under the said act of August 8th, 1846, and by the State conveyed to said company.

To this application the Secretary replied as follows:

[The letter of Secretary McClelland to Reverdy Johnson, November 10th, 1856, printed as No. LV above.]

Among the lands approved and certified to the State of Iowa under said act of 8th August, 1846, on or prior to the 30th December, 1853, were the lands mentioned in the declaration in this suit.

As often as any of said lands were so certified and approved, an entry was made upon the tract-books or register of the public lands, contained among the records of the General Land Office, showing the lands so approved, by township and district and section, as follows:

Township No. , *range No.* , *district of* .

Description of the tract.				Contents.		Rate per acre.		Purchase-money		Name of purchaser.
Part of section.	Sec'n.	Town.	Range.	Acres.	100ths.	$	Cts.	$	Cts.	
										Granted to the State for the Des Moines River improvement, per act of 8th August, 1846. Approved 17th Dec., 1853. (Or other date, according to the time when the particular section was approv' to the State by the Secretary of the Interior.)

Such an entry was made upon said tract-books and records of the Land Office as to all the lands which were approved to the State of Iowa under the act of 8th August, 1846, including the lands in question in this suit; and said entries remained upon said record uncancelled, and without any qualification, during the whole period from the time when they were originally made until after the decision of the Supreme Court of the United States in the case of Litchfield vs. Dubuque and Pacific Railroad Company, reported in 23d Howard, p. 66.

The lands so approved were, at the time of approval, marked and indicated upon the township maps or plats in the General Land Office, as being included in and forming part of the grant of lands made to the State of Iowa by said act of 8th of August, 1846, and they remained so marked and indicated all the time thenceforth until after the
850 date of said decision; and during the same period, the said lands were also marked and indicated upon the township maps and plats kept in the land offices of the United States in the State of Iowa, in the districts where said lands were situated, as having been granted to said State under and by virtue of said act of 8th of August, 1846. And after the date of the order by the General Land Office of 1st June, 1849, (hereinbefore set forth,) directing said lands to be withheld from sale, the said lands were always, by the General Land Office and by the Department of the Interior, withheld from sale or pre-emption, and were by said Land Office and Department of the Interior considered and held as appropriated and reserved for the purpose of satisfying the grant made by said act.

In 1859 a petition from citizens of Iowa was addressed to the President, asking that certain specified townships of the lands above the Raccoon Fork, which had been so approved to the State under said act, should be brought into market. In reply thereto the Commissioner of the Land Office addressed to Senator Jones, of Iowa, the following letter:

"GENERAL LAND OFFICE, *February 17th*, 1859.

"SIR: I have the honor to acknowledge the receipt of the petition referred by you to the Department on the 12th inst., of sundry citizens of Fort Dodge district, Iowa, asking that certain lands in said district may be brought into market; and in regard to the matter, to state that

the lands referred to by the memorialists are withheld from market in view of the grant to Iowa by act of August 8th, 1846, to aid in the improvement of the Des Moines River.

"Very respectfully, your obedient servant,

"THO'S A. HENDRICKS, *Commissioner.*

"Hon. G. W. JONES, *U. S. Senate.*"

In the annual report of the General Land Office accompanying the report of the Secretary of the Interior to Congress in 1858–1859, is this statement:

The following is an exhibit of the present condition of the Des Moines River grant, in Iowa, under the act of 8th August, 1846:

		Acres.
Lands below the Raccoon Fork, approved July 13th, 1848, by Secretary R. J. Walker		321,028.03
Lands situated above the Raccoon Fork, conditionally approved by Secretary A. H. H. Stuart—		
October 30, 1857, list No. 1	107,195.78	
" " " " 2	25,487.93	
" " " " 3	81,707.93	
March 10, 1852	143,908.37	
		358,299.95
Approved by Secretary R. McClelland:		
December 17, 1853	33,142.43	
December 30, 1853	12,813.51	
		45,955.94
Making aggregate approved		725,288.92

[An error occurred in said report in stating the amount of lands approved above the Raccoon Fork, by improperly including lists Nos. 1 and 2; the true amount of lands above Raccoon Fork, approved to the State, is obtained by omitting lists Nos. 1 and 2, and is $271,572\frac{24}{100}$, and as hereinbefore set forth.]

As fast as said lands were approved to the State of Iowa the State entered into possession of the same, including the lands above as well as those below the Raccoon Fork; and thenceforth the State continued in possession of all the lands which had been so approved to it, claiming title to said lands under said grant and act of approval, and exercised acts of ownership over the same, publicly and constantly, until it, from time to time, sold the same; and thenceforth the State or its grantees have remained publicly and notoriously in possession of said lands, claiming ownership of the same, and the State and its grantees were so in possession, claiming ownership and exercising acts of ownership, on the 15th of May, 1856, (when the act of Congress was passed granting lands to Iowa for railroad purposes,) and the 14th of July, 1856,
851 (when the State passed an act to accept said grant and regranting lands to certain railroad companies,) and on the 22d of March, 1858, (when the joint resolutions of the general assembly of Iowa was passed, authorizing a settlement with and a conveyance of lands to the Des Moines Navigation and Railroad Company,) and on the 3rd of May, 1858, and 18th of May, 1858, when patents were executed and delivered by the State, conveying said lands to said company, as hereinafter set forth.

After the making of said grant by the act of 8th of August, 1846, the State proceeded from time to time, as in said act authorized, to sell and dispose of said lands, applying the proceeds to the improvement of the Des Moines River, as contemplated in said act; and, on the 9th of June, 1854, the State by its authorized agents, made a contract with the said defendants The Des Moines Navigation and Railroad Company, in and by which the said company agreed to finish said improvement as contemplated in said act of Congress and specified in said contract, and to expend for that purpose all necessary sums to the amount of $1,300,000; and in consideration of such contract and expenditure, and in payment for the same, the State sold and agreed to convey to said company from time to time, and in the manner provided by said act of Congress, the whole balance of the lands which had been certified and approved to the State under said act, and which then remained unsold, and all other lands which should be thereafter certified and approved to the State of Iowa under this act.

Among the lands thus sold to said company were the lands mentioned in the declaration in this suit.

After the making of said contract, the said company proceeded with the work upon said improvement; and as the said improvement progressed, and in accordance with the said act of Congress, the State from time to time, by its regular and authorized officer, issued to said company in payment for work done by it upon said improvement, and in pursuance of the aforesaid contract, sundry certificates, in form and substance as follows:

OFFICE REGISTER OF THE
DES MOINES RIVER IMPROVEMENT,
Ottumwa May 14th, 1855.

I certify that the following lands were sold by me on this day of to the Des Moines Navigation and Railroad Company, in pursuance of the contracts and agreements with the said company, for the construction of the said Des Moines River improvement, to wit:

(Here follows a long list of lands set forth specifically by section, township, and range, together with the number of acres in each tract, respectively, including the lands mentioned in the declaration in this suit.)

(Signed) GEORGE GILLESPIE,
Register, &c.

The said George Gillespie was at the said dates, register of the Des Moines improvement, and was the proper person to transfer said lands and issue the said certificates.

The General Land Office decided, in 1856, not to certify any more lands to the State under the grant of 8th August, 1846. Thereupon the said defendants suspended the work upon said improvement, and afterwards said company and the State made a final settlement as follows:

The general assembly of said State, of 22d March, 1858, passed a joint resolution, as follows:

[Joint resolution containing propositions for a settlement with the Des Moines Navigation and Railroad Company, approved March 22d, 1858. Printed in Exhibit IX to plaintiff's bill, on page 82 of the record, and referred to above in No. LVII.]

852 The Des Moines Navigation and Railroad Company ratified and accepted the proposition embodied in the joint resolution

within the time and in the manner therein specified. The company paid to the State the sum of $20,000 in cash, and released and conveyed to the State the dredge-boat and materials in said resolution mentioned, which were of the cash value of more than $100,000, and in all respects, on its part, fully complied with all the terms of settlement in said joint resolution provided.

Thereupon the governor of the State of Iowa addressed to the President of the United States a certificate as follows:

[The certificate of Governor Lowe to the President, No. LXI above.]

And afterwards the said State, on the 3d of May, 1858, executed and delivered to the Des Moines Navigation and Railroad Company a certain deed or patent, under the seal of the State, as follows:

[One of the deeds of the State of Iowa to the Des Moines Navigation and Railroad Company. Printed in Exhibit IX to plaintiff's bill, on p. 84 of this record, and referred to in No. LXVI above.]

On the same day the said State executed and delivered to said company several other similar patents, under the seal of the State, and the aggregate amount of the land described in and conveyed by all of said patents was 266,107.23 acres, of which about 58,830 acres were below, and the remainder above Raccoon Fork.

On the 18th day of May, 1858, said State also executed and delivered to the said company a deed and patent under the seal of the said State, of which the following is a copy:

[One of the deeds refer'ed in No. LXVI.]

Said State caused said patent to be duly recorded in Iowa, and also filed an original or copy of said patent in the office the Commissioner of the General Land Office, at Washington, with a list of the lands intended to be conveyed thereby, of which the lands mentioned in the declaration in this suit were part.

At the December term of the Supreme Court of the United States hold in 1859–1860, a decision was made in the case of Litchgeld vs. The Dubuque and Pacific Railroad Company, and was reported in 23 Howard, 66. Said decision was rendered on 9th of April, 1860.

When such decision became known to the General Land Office, the Commissioner, on the 18th of May, 1860, issued a printed notice, which was sent to the land offices at Fort Des Moines and Fort Dodge, in Iowa, of which the following is a copy:

853 [Notice No. 661, set out in No. LXXIII above.]

Such notice was at once posted in a conspicuous place in said land offices in Iowa, and so remained posted until the close of the year 1863.

On the 25th May, 1860, W'm T. Steiger, an agent in behalf of the Dubuque and Pacific Railroad Company, filed in the General Land Office a list of lands lying within the claimed limits of the Des Moines River grant above the Raccoon Fork, and claimed to select some of them for said railroad company, under the act of 15th May, 1856, granting lands to Iowa for railroad purposes.

The Commissioner of the General Land Office, in June, 1860, acknowledged the receipt of the list, and added—

The tracts in said list are above the Raccoon Fork, and within the lands that had been selected under the Des Moines River grant by act of 8th of August, 1846, and in view of the recent decision of the Supreme Court affecting a title to lands under that grant above the said fork, the present lists are presented by you. As the matter has been placed in train for congressional intervention, no action can be taken in the mat-

ter presented by you until Congress shall have had time to consider and dispose of the subject.

Respectfully, your ob't serv't,

JOS. S. WILSON,
Commissioner.

On the 7th July, 1860, the Commissioner of the Land Office, in an official letter to the Secretary of the Interior in relation to the same subject, said:

Without passing upon, or, in fact, considering the question as to the right of the State under the railroad grant to these lands which, at the date of the grant, had been withdrawn from sale or location, the fact that Congress had taken incipient action in the matter, of itself justifies us in not recommending further proceedings by the Department until after the close of the next session of Congress.

Respectfully, your ob't serv't,

JOS. S. WILSON,
Commissioner.

On the 6th of September, 1860, the Secretary of the Interior addressed the following letter to the Commissioner of the General Office:

[Letter of Secretary Thompson to the Commissioner of the General Land Office, Sept. 6th, 1860. No. LXXXI above.]

On November 3rd, 1860, the Secretary addressed a letter to Hon. George W. Jones, Senator from the State of Iowa, in which he said:

[Letter No. LXXXII, above.]

854 On the 2d March, A. D. 1861, the Congress of the United States passed a joint resolution providing that "all the title which the United States still retain in the tracts of land along the Des Moines River, and above the mouth of the Raccoon Fork thereof, in the State of Iowa, which have been certified to said State improperly by the Department of the Interior as part of the grant by act of Congress approved August 8th, 1846, and which is now held by bona-fide purchasers under the State of Iowa, be, and the same is hereby, relinquished to the State of Iowa."

On the 10th of April, 1862, the Secretary of the Interior addressed to the Commissioner of the Land Office a letter as follows:

[The letter of Secretary Smith to the Commissioner of the General Land Office, April 10th, 1862. Printed in Exhibit VII to the plaintiff's bill, on p. 73 of this record, and referred to in No. LXXXV.]

Up to the time of receiving said letter, the General Land Office had continued to reserve "the lands lying along the Des Moines River, in Iowa, within the claimed limits of the Des Moines grant in that State, above the mouth of the Raccoon Fork of said river," in the manner and for the purposes mentioned in its aforesaid printed notice No. 661, dated 18th of May, 1860. After receiving said letter, the Commissioner wrote to Ex-Governor Grimes, then a Senator from Iowa, as follows:

[Letter of Commissioner Edmonds to Senator Grimes, April 15th, 1862. Printed in Exhibit VII to the plaintiff's bill, on page 74 of this record; referred to in No. LXXXVI above.]

The governor replied as follows:

[Letter of Governor Kirkwood to Commissioner Edmonds, May 6th, 1862. Printed in Exhibit VII to the plaintiff's bill on page 74 of this record; referred to in No. LXXXVII above.]

855 On 26th June, 1862, the said Commissioner of the Land Office wrote to the governor of the State of Iowa as follows:

[Letter of Commissioner Edmonds to Governor Kirkwood, June 26th, 1862. Printed in Exhibit VII to the plaintiff's bill, on page 74 of this record; referred to above in No. LXXXVIII.]

In reply, the governor of Iowa caused to be filed in said General Land Office a list, certified to by the said governor and by the land commissioner of said State, under their official seal, of all the lands situated above the Raccoon Fork of the Des Moines River which had been certified and approved to the State under said act of 8th August, 1846; and also setting forth that all of said land had been sold and conveyed by said State, by deed or patent, prior to said 2d March, 1861, as follows:

List of Des Moines River lands, above the mouth of the Raccoon Fork, sold by the State of Iowa.

Then follows list of about 697 individual sales, as follows:

Dates of patents.	No. of patents.
Feb'y 16, 1853	148
June 1, 1854	29
June 1, 1855	2
July 1, 1858	430
Sept. 1, 1858	13
Oct. 1, 1858	1
March 14, 1859	5
April 9, 1859	3
April 20, 1859	2
May 23, 1859	18
May 31, 1859	44
July 12, 1859	1
Feb'y 25, 1860	1
	697

Example: W. ½ of N. W. ¼, N. E. ¼ of N. W. ¼, S. 19, T. 78, R. 24, Ac., 122.83, at $1 25. March 25, 1852. Phineas S. Cassidy. Patented, Feb'y 16, 1853. No. 2,855.

Immediately follows certified copies of joint resolution of the general assembly, approved March 22, 1858, and resolution of acceptance of Des Moines Navigation and Railroad Company of 15th April, 1858, signed by R. S. Burrows, president Des Moines Navigation and Railroad Company. Certified as a true copy by Elijah Sells, secretary of state.

856 Then follows list of lands.

Parts of section.	Sec.	T.	R.	Acr's.	Date of sale.	To whom sold and patented.	Date of patent.	No. of pat.
					May 14, 1855.	Des Moines, N. & R. R. Co.	May 3, 1858.	9
					Do	do	do	10
					Do	do	do	11
					May 6, 1856	do	do	9
					Do	do	do	11
					Do	do	do	12
					Do	do	do	13
					Do	do	do	112
					Do	do	do	13
					Do	do	do	14
					No date	do	do	14
					May 14, 1856	do	do	9
					May 6, 1855	do	do	9

(Here follows copy of the general deed from the State of Iowa to the Des Moines Navigation and Railroad Company, dated May 18th, 1858.)

The said list embraced all the lands situated above Raccoon Fork, mentioned in the patents from the State to said company, including that in question in this suit.

[Copy of final certificates.]

STATE LAND OFFICE,
Des Moines, Iowa, July 22, 1862.

I, A. B. Miller, register of the State land office for the State of Iowa, do hereby certify that the within and foregoing lists are true and exact exemplifications of the sales and records of patents made out for the "Des Moines River grant," in land certified to the State of Iowa under the act of August 8th, 1846, for the "improvement of the navigation of the Des Moines River," as shown by the records and plats now on file in this office, giving description of the lands sold, the amount paid therefor, "date of sale," "name of purchaser," to whom patented, date and number of patent—except a part of that sold to the Des Moines Navigation and Railroad Company, the date of which sale is not in this office; but the date of the patents are shown—and the consideration of this latter class of lands was work upon the improvement of the Des Moines River, upon which the navigation company took lands at $1 25 per acre. These lists include all land heretofore certified to the State, under the act of 1846, above the mouth of the Raccoon Fork, and includes a copy of a deed made out to the "Des Moines Navigation and Railroad Company," for all of these lands to which the State of Iowa had any title.

In testimony whereof I have hereto set my hand the date above written.

A. B. MILLER, *Register.*

EXECUTIVE OFFICE,
Des Moines, Iowa, July 22, 1862.

I, Samuel J. Kirkwood, governor of the State of Iowa, do hereby certify that the above-named A. B. Miller was duly elected and qualified register of the State land office; that he is, by the laws of the State of Iowa, the custodian of all books and papers relating to the lands of the State, and has charge of the office in which the same are deposited; that his certificate herein is entitled to full faith and credit, and that the above is his genuine signature.

In testimony I have hereunto set my hand and caused the great seal of the State of Iowa to be hereto affixed the date above written.

[L. S.] SAMUEL J. KIRKWOOD.

By the governor:

ELIJAH SELLS,
Secretary of State.

By a subsequent act, approved July 12th, 1862, Congress enacted "that the grant of lands to the then Territory of Iowa for the improvement of the Des Moines River, made by the act of August 8th, 1846, is hereby extended so as to include the alternate sections (designated by odd numbers) lying within five miles of said river, between the Raccoon Fork and the northern boundary of said State; such lands are

to be held and applied in accordance with the provisions of the original grant, except that the consent of Congress is hereby given to the application of a portion thereof to aid in the construction of the Keokuk, Fort Des Moines and Minnesota Railroad, in accordance with the provisions of the act of the general assembly of the State of Iowa, approved March 22nd, 1858." * * * *

857 By section one of the act last aforesaid of the general assembly of the State of Iowa, it was enacted "that all the lands granted to the then Territory of Iowa by an act of Congress approved August 8th, 1846, entitled An act granting lands to the Territory of Iowa to aid in the improvement of the navigation of the Des Moines River, in said Territory, and all lands and compensation which may be given in extension or in lieu of any portion thereof by the General Government; and also all stone, timber, and other material turned over to the State by the Des Moines Navigation and Railroad Company in settlement with the State of Iowa, be, and the same are hereby, disposed of and granted to the Keokuk, Fort Des Moines and Minnesota Railroad Company, a body corporate, created and existing under the laws of the State of Iowa, to aid in the construction of a railroad from the city of Keokuk, at the mouth of the Des Moines River, up and along the valley of said river, by way of the city of Des Moines, to the northern line of the State, in the direction of the southern bend of the Minnesota or St. Peter's River, excepting all the land belonging to said grant heretofore sold by the State of Iowa, or which may hereafter be conveyed to the Des Moines Navigation and Railroad Company, by virtue of a settlement now pending between the State and said company," &c., "this grant to become operative as soon as Congress shall assent to or permit a diversion, or the title thereto shall become vested in the State, so as to be subject to grant."

[By the statutes of Iowa it is provided that "where a deed purports to convey a greater interest than the grantor was at the time possessed of, any after-acquired interest of such grantor, to the extent of that which the deed purports to convey, enures to the benefit of the grantee."—Code of Iowa (Revision of 1860,) p. 390, section 2210.]

The following is a copy of a letter from the Commissioner of the General Land Office to the President of the United States:

858 [Letter of Commissioner Butterfield to the President, September 19th, 1850. No. XXV above.]

The following communication was addressed, at its date, by the Secretary of the Interior to the Commissioner of the General Land Office:

DEPARTMENT OF THE INTERIOR,
August 29, 1864.

SIR: It has been determined, with the approbation of the President, after due consideration on the subject, to bring again into market the lands heretofore reserved for railroad purposes, in all cases where grants had not been made at the close of the late session of Congress, and to decline, in future, to withdraw lands for such purposes until after the necessary grant shall have been actually made.

R. MCCLELLAND, *Secretary.*

COMMISSIONER OF THE GENERAL LAND OFFICE.

While the act of 15th May, 1856, granting lands to Iowa for railroad purposes was pending in Congress, the following proceedings occurred:

On 6th May, 1856, the bill was reported in the House of Representatives by Mr. Bennett, chairman of the Committee on Public Lands, with an amendment, and, as amended, it passed the House on the 8th of May, 1856.

Upon the discussion on the bill Mr. Bennet said: "It is a bill granting lands to the State of Iowa for railroad purposes on the alternate-section system, that is, doubling the price of the reserved sections and giving to the railroad companies every other section for a limited width not to exceed fifteen miles. It confines them to take the lands on the line of the railroad. When each twenty miles is built, they must take the alternate sections within the twenty miles." (See Congressional Globe, vol. 34, p. 1122, 1st session, 34th Congress.)

Upon the discussion of the same bill in the Senate, (Congressional Globe, vol. 34, p. 167,) Mr. Jones, Senator from Iowa, said of the bill: "It provides for starting four roads from the Mississippi River, but neither one of those roads will get any land until it approaches the centre of the State. The intervening lands have already been sold, and the money for *it* is now in the coffers of the Government."

Mr. Yulee said, (Congressional Globe, vol. 34, p. 6168:) "It is immaterial what may be the extent of the roads, or the quantity of land which may be acquired by the State under this grant, because she will get no lands except for roads which pass through the public domain. If there be public domain through which the roads pass, it is immaterial what the location is. If the principle upon which the legislation rests be right, the public will receive the same benefit from the increased value of the lands which remain to the United States, whether the location be on one line or another."

Senator Adams, (Congressional Globe, vol. 34, p. 1169,) said: "It is wholly immaterial what the quantity of land may be. We are acting upon the principle that the increased value of the public domain, in consequence of the construction of such a road, will be a full equivalent of the land granted. In that view it is wholly immaterial what the number of acres may be, whether more or less. * * * * * * * * * As far as I have observed, the reserved lands have been doubled in value."

Senator Geyer said, (Congressional Globe, vol. 34, p. 1166 and 1187:) "Under this bill the title to the land will not pass out of the United States until a certain quantity of road be constructed. The title of the land is to pass out of the United States only when twenty miles of road shall have been constructed, and so fast as the road is constructed. Inasmuch as the title does not pass out of the United States, and there is no power in any one to dispose of one acre of the land until the road is made under the bill," &c.

The defendant's counsel thereupon rested their case.

The plaintiff's counsel, further to maintain the issue on their part, gave in evidence the following matters, namely:

859 On the 15th of May, 1856, Congress passed an act as follows:

[An act making a grant of lands to the State of Iowa, in alternate sections, to aid in the construction of certain railroads in said State," approved May 15th, 1856. Printed in Exhibit IX to plaintiff's bill, on page 89 of this record.]

On 10th May, 1856, the Commissioner of the General Land Office issued, by telegraph, the following order to the register and receiver at Fort Des Moines, Iowa: "You will suspend from sale or location all the lands in your district until further orders. Acknowledge the receipt of this despatch by telegraph and mail. Tho's A. Hendricks, Commissioner." On the same day the Commissioner, by telegraph, instructed the register and receiver at Fort Dodge, Iowa, as follows: "You will suspend from sale or location all the lands in your district, situated south of the line which divides township ninety-two (92) and ninety-three (93) until further orders. Acknowledge the receipt of this despatch by telegraph and mail. Tho's A. Hendricks, Commissioner."

The lands in question in this suit, and all the lands above the Raccoon Fork which had been approved to the State of Iowa under the act of 8th August, 1846, were situated in the Fort Des Moines land district and in that portion of the Fort Dodge district in which said orders directed sales and locations to be suspended; and a large quantity of other lands then belonging to the United States were also situated in the same districts.

On the 15th May, 1856, the Commissioner of the General Land Office addressed the following letter to the register and receiver at Fort Des Moines, Iowa:

[Letter of Commissioner Hendricks to the register and receiver at Fort Des Moines, Iowa, May 15th, 1856, No. L above.]

A similar letter was addressed at the same date to the register and receiver at Fort Dodge, Iowa.

On 19th June, 1856, the Commissioner of the Land Office addressed to the land officers at Fort Dodge and Fort Des Moines the following letter:

GENERAL LAND OFFICE, *June 19th*, 1856.

GENTLEMEN: Instructions having been sent you from this office by telegraph on the 10th ult., and subsequently by mail on the 15th ult., in reference to the withdrawal from market of certain lands in your district, in pursuance of an act of Congress approved on the 15th
860 ult., making a grant of land to the State of Iowa, in alternate sections, to aid in the construction of certain railroads in that State, you are advised that settlements are authorized upon any of the lands thus withdrawn, and rights of pre-emption may be acquired as well to sections which may be odd-numbered and within the six-mile limits of the line of the railroads as to the other lands so reserved.

By the first section of the act referred to the United States can dispose of by pre-emption any of the lands thus withdrawn up to the time "when the lines or routes of said road are definitely fixed." Then, and not till then, will the right of the State attach under the said act to all vacant lands in the odd-numbered sections within the six-mile limits.

Acknowledge the receipt of this.

Very respectfully,

THO'S A. HENDRICKS, *Commissioner.*

Afterward the Commissioner of the Land Office issued the following notice, dated :

[Notice No. 591, "for restoration of certain lands to market in Iowa." Printed in Exhibit VIII to the plaintiff's bill, on p. 77 of this record.]

On the 28th of January, 1857, the Commissioner sent to six different land offices in Iowa (including those of Fort Des Moines and Fort Dodge) a letter, of which the following is a copy:

GENERAL LAND OFFICE, *January* 28, 1857.

GENTLEMEN: For your guidance in disposing of the public lands, I have this day transmitted you by mail a diagram of the district of lands subject to sale at your office, upon which has been traced the lines of route and the lines of the six and fifteen mile limits, within the said district, of the railroads, to aid in the construction of which a grant of lands was made to the State of Iowa by act of Congress approved May 15th, 1856.

As all the vacant tracts in the odd-numbered sections, outside of the six and within the fifteen mile limits, have been selected by the agent of the State in lieu of the lands sold and pre-empted in the alternate sections granted by the act above mentioned, such tracts are not restored to market by notice No. 591—copy herewith—and you will continue to reserve them, as heretofore, from sale or location for any purpose whatever.

Respectfully, your obedient

THO'S A. HENDRICKS, *Commissioner.*

While the aforesaid act of 15th of May, 1856, was pending in Congress, and before it had become a law, Hon. Geo. W. Jones, Senator from Iowa, by letter to the Commissioner of the Land Office, inquired as to the quantity of lands which would accrue to the State under the said bill.

In reply the Commissioner addressed to him the following letter and estimate:

[Letter of Commissioner Hendricks to Senator Jones, May 12th, 1856, No. XLIX above.]

861 On the 14th of July, 1856, the general assembly of the State of Iowa passed an act as follows:

["An act to accept of the grant and carry into execution the trust conferred upon the State of Iowa by an act of Congress entitled 'An act making a grant of lands to the State of Iowa, in alternate sections, to aid in the construction of railroads in said State,' approved May 15th, 1856." Printed in Exhibit IX to plaintiff's bill, on p. 90 of this record.]

The Dubuque and Pacific Railroad Company, mentioned in the 5th section of said act, was organized in 1853 under the laws of Iowa. Article 1 of its articles of incorporation was as follows:

L. H. Langworthy, H. W. Sandford, Platt Smith, John J. Dyer, J. P. Farley, R. B. Mason, F. V. Goodrich, Robert C. Waples, M. Mobley, G. R. West, Asa Horr, F. S. Jesup, Edward Stimson, Geo. W. Jones, Robert Waller, Robert Schuyler, and their associates, and all such persons as shall hereafter become stockholders in the company hereby incorporated, hereby form themselves into a body corporate, under the name and style of the "Dubuque and Pacific Railroad Company," for the purpose of constructing a railroad from some point in the city of Dubuque, thence westerly on the best route towards the Pacific Ocean.

In July, 1856, said company assented to and accepted the aforesaid act.

On the 20th August, 1856, the following letter was addressed by the

Commissioner of the General Land Office to the secretary of state of Iowa:

[The letter of Commissioner Wilson to McCleary, secretary of state, Aug. 20th, 1856. Printed in Exhibit VIII to the plaintiff's bill, on p. 78 of this record.]

On the 27th September, 1856, the said Dubuque and Pacific Railroad Company filed in the office of the secretary of said State of Iowa a map, having indorsed thereon a certificate as follows:

[The certificate of J. P. Farley, president, and B. B. Provoost, engineer. Sept. 27th, 1856. Printed in Exhibit VIII of the plaintiff's bill, on p. 79 of this record.]

862 The land mentioned in the pleadings in this suit is within six miles of the line or route of the road shown on said map or plat; said route as shown on said map or plat, is on the general route of the road designated by the act of Congress of 15th May, 1856.

At the time said act of 14th July, 1856, was passed by the general assembly of Iowa, and on said 30th day of September, 1856, no portion of said road had been actually constructed; and no part of said road was completed until May 11, 1857, when the first thirty miles, extending westerly from Dubuque, were opened for business. During the year 1857 eight miles more were completed. The said Dubuque and Pacific Railroad Company did not, nor did the Dubuque and Sioux City Railroad Company, have seventy-five miles of said road completed and equipped within three years from the first day of December, 1856, nor thirty miles in addition in each year thereafter.

The said road had not been completed to any point nearer than one hundred and ten miles distant from said land at the time of the passage of the joint resolution of Congress, on the 2nd of March, 1861. And it had not been completed to any point nearer than ninety miles distant from said land at the time of the passage of the act of Congress on 12th of July, 1862. The general assembly of the State of Iowa, on the 7th of March, 1860, passed an act extending the time for the completion of 75 miles of the Dubuque and Pacific Railroad Company.

Said Dubuque and Pacific Railroad Company, by the president and secretary, presented a petition to Congress, on the 19th of May, 1860, "praying that the company may not be divested of the title to lands upon which persons have settled, and compelled to take other lands in lieu of them." Said petition and accompanying documents were printed as Miscellaneous (Senate) Document No. 60, of the first session of 36th Congress. The documents were headed "Documents of the Dubuque and Pacific Railroad," and among them was the following official letter from the Commissioner of the General Land Office.

[Letter of Commissioner Hendricks to Henn, agent, &c., March 3d, 1857. Printed in Exhibit VIII to the plaintiff's bill, on p. 79, of this record.]

The Secretary of the Interior has certified and approved to the State of Iowa, under the act of May 15, 1856, in all, 2,770,588.86 acres; of which quantity 1,226,163.40 have been for and on account of the road mentioned in said act of Congress, from the City of Dubuque to a point on the Missouri River near Sioux City; 775,444 acres for the route known as The Iowa Central Air-line Road; and 481,774 acres for the said road from the city of Davenport to Council Bluffs. The details will appear by the following:

863 *Statement of lands approved to the State of Iowa for railroads under act approved 15th of May, 1856.*

	Land district.	Limit.	Dates of appr'v'l.	No. of acres.
Dubuque and Pacific (now Sioux City) Railroad.	Dubuque	6	Dec. 27, 1858	2,361.08
	do	15	do	5,901.49
	Fort Dodge	6	do	103,341.61
	do	15	do	210,722.48
	Sioux City	6	do	344,225.20
	do	15	do	480,929.21
	Fort Dodge	6	April 7, 1863	56,473.32
	do	15	do	21,061.91
	Sioux City	6	do	1,382.42
	Fort Dodge	6	Dec. 13, 1864	159.60
				1,226,558.32
Deduct corrections				394.83
Leaves correct'd am't				1,226,163.49
Iowa Central Air-line (now Cedar Rapids and Missouri River) Railroad.	Dubuque	6	Dec. 27, 1858	1,809.74
	do	15	do	3,998.57
	F't Des Moines	6	Oct. 24, 1859	12,824.01
	do	15	do	22,887.74
	Fort Dodge	6	Dec. 27, 1858	576.00
	do	15	do	59,072.60
	Sioux City	6	do	132,911.18
	do	15	do	137,641.84
Iowa Central Air-line (now Cedar Rapids and Missouri River) Railroad.	Council Bluffs	6	do	100,588.07
	do	15	do	193,377.59
	F't Des Moines	6	April 7, 1863	46,898.73
	do	15	do	49,387.16
	Fort Dodge	15	do	13,479.96
Total				775,444.19
Mississippi and Missouri Railroad	F't Des Moines	6	March 26, 1859	17,627.16
	do	15	do	17,162.39
	Council Bluffs	6	Dec. 27, 1858	141,265.07
	do	15	do	211,366.08
	Chariton	15	do	80.00
	F't Des Moines	6	March 21, 1862	11,194.59
	do	15	do	20,906.17
	Council Bluffs	6	do	8,708.49
	do	15	do	17,778.92
	F't Des Moines	6	April 7, 1863	12,071.78
	do	15	do	23,613.71
Total				481,774.36
Burlington and Missouri River Railroad	F't Des Moines	6	Aug. 22, 1859	18,480.62
	do	15	do	25,055.18
	Council Bluffs	6	March 23, 1859	71,675.40
	do	15	do	115,622.04
	do	6	March 21, 1862	21,740.01
	do	15	do	28,034.13
	F't Des Moines	15	Feb'y 18, 1863	160.00
	Council Bluffs	6	April 7, 1863	1,578.47
	do	15	do	4,860.51
Total				287,206.34

None of the lands which had been approved to the State of Iowa under act of 8th of August, 1846, for the improvement of the Des Moines River, were embraced in any of the lists of lands approved to the State under the act of 15th of May, 1856, until April 7th, 1863; but some of the lands approved under the railroad grant at that date, had been previously approved to the State of Iowa under said act of 8th of August, 1846, including the lands in question in this suit. The total amount of the lands so approved to the State in aid of the road from Dubuque to Sioux City, which had previously been approved to the State under the act of 8th of August, 1846, was 56,473.32 acres.

The following is a copy of the heading of the list of lands within the six-mile limits of the route of the said railroad from Dubuque to Sioux City, approved the 27th of December, 1858, and of the approval:

[Printed in Exhibit VIII to plaintiff's bill, on page 80 of this record.]

864 And the following is a copy of the heading on approval, of the list of lands within fifteen miles of said route, approved 27th December, 1858:

[Printed in Exhibit VIII to plaintiff's bill, on p. 81 of this record.]

The same form of lists and approvals were used at the other dates specified.

The State of Iowa has not conveyed to said Dubuque and Pacific Railroad Company nor to the Dubuque and Sioux City Railroad Company the lands mentioned in the pleadings in this suit, nor any of the lands so certified and approved to the State under the act of the 8th August, 1846, unless the said act of the general assembly of 14th July, 1856, shall be held to have conveyed the same. And it has not in any manner attempted to transfer or convey said lands, or any of them, to said Dubuque and Pacific Railroad Company, or any other party or corporation whatever as the successor of said Dubuque and Pacific Railroad Company, unless it be by said act of 14th July, 1856. It has never executed any deed or patent for any of the lands in question in this suit to any party except the Des Moines Navigation and Railroad Company.

On the 28th January, 1857, the general assembly of the State of Iowa passed an act supplemental to an act entitled "An act to accept of the grant and carry into execution the trust conferred upon the State of Iowa by an act of Congress entitled 'An act making a grant of lands to the State of Iowa, in alternate sections, to aid in the construction of railroads in said State,'" approved May 15th, 1856, which said act of the legislature of Iowa was approved July 14th, 1856.

Section 1 of said act provided, "That the said companies may make such disposition of the lands granted by the act to which this is a supplement, by mortgage or deed of trust, as may be deemed proper for the purpose of securing any amount of construction bonds necessary for the completion of said roads."

Section 2 was as follows: Any mortgage or deed of trust made upon the lands, roads, or the property of either, shall bind and be a valid lien upon all the property mentioned in such deed or mortgage, including rolling-stocks; and the purchaser, under a trustees' sale or foreclosure of mortgage, shall have and enjoy all the rights of a purchaser on execution sale: *Provided further*, That nothing contained in this act shall be so construed as in any manner to interfere with, change, or modify the rights of this State or of the United States to any lands granted by Congress to this State, and by this State to certain railroad companies therein, as a security for the completion of said roads, or to transfer any right in said lands, otherwise than as subject to all the conditions imposed by the grant made by the United States to this State, and by the grant by this State to the said companies, or by either of said grants.

On the 14th of March, 1857, said Dubuque and Pacific Railroad Company executed a mortgage to Abram S. Hewitt and others, as trustees, for the purpose of securing the payment of bonds which said company proposed to issue.

On the 9th June, 1857, said Dubuque and Pacific Railroad Company also executed to the same trustees a deed of trust purporting to confirm, in all respects, the grant made by the aforesaid mortgage.

865 The property intended to be embraced was described in said mortgage, and also in said deed of trust, as follows:

All and singular the roadway, stations, depot land, and other lands appurtenant to said railroad now owned or hereafter to be acquired by said party of the first part, constituting or belonging to the railroad of said first party extending from the city of Dubuque, in the State of Iowa, to a point on the Missouri River at or near Sioux City, in the said State, with a branch from the Tete des Morts to the nearest point on said road; together with all the locomotives, cars, buildings, machinery, tools, or implements whatever, belonging or appurtenant to said railroad, and all the franchises, rights, or privileges belonging to said company, or in any way pertaining or appurtenant to said railroad, now existing or hereafter to be acquired.

Also, all right, title, interest, claim, or demand which said party of the first part now has, or hereafter shall acquire, in or to all public lands of the United States granted by act of Congress, approved 15th May, 1856, to the State of Iowa, and by the general assembly of said State of Iowa, by act approved July 14th, 1856, granted to the said Dubuque and Pacific Railroad Company, the party of the first part; subject, however, to the terms and conditions of the said acts of Congress and of the general assembly of the State of Iowa, with all the estate, right, title, and interest, property, possession, claim, or demand whatever, at law or in equity, of the said parties of the first part in and to the same, and each and every part or parcel thereof, excepting, saving, and reserving to the party of the first part all lands now owned or hereafter to be acquired by them, which may not be included in the said grant of public land from the United States, and may not be necessary for the uses and purposes of said railroad and the depots and right of way thereof.

Subsequently the Dubuque and Pacific Railroad Company, made default in the conditions of the said mortgage, and proceedings were taken in the district court of Dubuque County, in the State of Iowa, to foreclose the same; and in said court the following proceedings and decree were had and entered, that is to say:

District court, Dubuque County.

MORRIS K. JESUP ET AL., TRUSTEES OF THE Dubuque and Pacific Railroad Company,
vs.
THE DUBUQUE AND PACIFIC RAILROAD CO. et al.
} 512. Chancery.

SATURDAY, *August 18th*, 1860.

Now come the parties, by Platt Smith, solicitor for complainants, and James McKinlay, solicitor for the Dubuque and Pacific Railroad Company, and submit this case to the court upon bill and answer; and thereupon, on consideration thereof and by consent of parties, it is ordered, adjudged, and decreed by the court that the complainants have and recover of The Dubuque and Pacific Railroad Company the sum of one million seven hundred and twenty-two thousand five hundred and ten dollars, due and in default upon the mortgages named in the bill.

And that if they fail to pay the same within ten days, their right and equity of redemption in and to the properties mortgaged be and forever remain barred and foreclosed, and the right and title thereof shall be absolute in the said complainants.

That the complainants, in taking and acquiring the absolute right and title in said property, namely, the Dubuque and Pacific Railroad,

its franchises, right of way, depot grounds and buildings, rolling-stock, lands granted by Congress to aid in constructing said road remaining undisposed of, and other property mentioned in said mortgages, shall take the same, to be by them conveyed, in conjunction with the Dubuque and Pacific Railroad Company, *te* the Dubuque and Sioux City Railroad Company, in accordance with the terms and conditions hereinafter set forth.

And the Dubuque and Sioux City Railroad Company shall have and hold the lands which were granted by Congress to the State of Iowa, to aid in building said road and branch, and by the State of Iowa to the Dubuque and Pacific Railroad Company, subject to the same rights and obligations, and upon the same terms and conditions as the same were held by the Dubuque and Pacific Railroad Company, it being expressly agreed and understood that the Dubuque and Sioux City Railroad Company is a new company, formed under articles of incorporation drawn up and adopted for the benefit of all parties concerned in the Dubuque and Pacific Railroad Company, whether as stockholders, bondholders, or creditors.

866 And by consent, as aforesaid, it is ordered, adjudged, and decreed that the bonded indebtedness of the Dubuque and Pacific Railroad Company shall be exchanged, dollar for dollar, with accumulated interest to the date of this decree for preferred stock of the Dubuque and Sioux City Railroad Company, certificates of which shall be issued in form as follows, to wit:

No. —— —— Preferred shares.

State of Iowa—Dubuque and Sioux City Railroad Company.

This certifies that entitled to preferred shares of the capital stock of the Dubuque and Sioux City Railroad Company of one hundred dollars each, transferable only by the said , or attorney, on the transfer-books of the said company on the surrender of this certificate.

The whole amount of preferred shares of the capital stock is two million dollars, which the company have the right to redeem at par at any time.

Dubuque, , 186 .

——— ———, *President.*

——— ———, *Secretary.*

And that the holders of the preferred shares of the Dubuque and Sioux City Railroad Company shall be entitled to receive a dividend on their shares, from year to year, the net earnings of the road, but not in any one year more than seven per cent. unless the earnings make a dividend of over seven per cent. on all the stock, in which case the common and preferred shares shall receive the same dividend.

And that the shareholders of the Dubuque and Pacific Railroad Company shall receive, in exchange for their stock therein, including dividend-interest to 1st June, 1860, on the surrender of the same, common stock in the Dubuque and Sioux City Railroad Company, to an equal amount, respectively.

And that the creditors of the Dubuque and Pacific Railroad Company who hold securities for the amounts owing them by the company shall have and receive in exchange for such securities, and in satisfaction of the debts, preferred stock in the Dubuque and Sioux City Railroad Company according to the form above written.

And that the unsecured creditors of the Dubuque and Pacific Railroad Company shall be entitled to receive, in full satisfaction of their claims and demands against the company, common stock of the Dubuque and Sioux City Railroad Company to an amount equal to what may be justly owing to them, respectively. And that the indebtedness of the Dubuque and Pacific Railroad Company, for right of way, for construction of the second forty miles of road, for operating expenses, and what may remain due on back pay-rolls, and to officers and employés of the company, and for the trust expenses, and on moneys advanced to pay taxes, shall be settled and paid for by the Dubuque and Sioux City Railroad Company, and the officers of last said company are authorized to pay the same in cash or in preferred stock of their company.

And it is further ordered, adjudged, and decreed that this decree shall not absolutely bar, foreclose, or cut off any of the indebtedness aforesaid, but that the holders thereof shall be entitled to have and receive of the Dubuque and Sioux City Railroad Company payment of the same in common stock, preferred stock, or otherwise, according to the nature of their respective claims.

And it is further ordered, adjudged, and decreed that the complainants shall have right to settle and compromise any claim or claims that may be set up against the Dubuque and Pacific Railroad Company, and that their action therein shall be binding and effectual against the Dubuque and Sioux City Railroad Company.

And that it is only such persons as consent to come in under the provisions of this decree that shall be entitled to receive stock in last
867 said company for any claim or demand against the Dubuque and Pacific Railroad Company.

And as to the other defendants, this cause is continued, with leave to show cause, if any they have, why this decree should not be held firm and effectual forever. Costs taxed at 450 dollars.

District court, Dubuque County.

MORRIS K. JESUP ET AL.
vs.
DUBUQUE AND PACIFIC RAILROAD COMPANY et al. } 512. Chancery.

SATURDAY, *Dec. 22d*, 1860.

In this case Platt Smith, solicitor for plaintiff, moves that a master be appointed to examine the trustees' accounts and report to the court thereon, with a view to their final discharge. And the company appears, by James M. McKinley, their solicitor, and makes no objection; thereupon the court appoints David S. Wilson master, for the purpose aforesaid, and to report by the next February term.

District court, Dubuque County.

MORRIS K. JESUP ET AL., TRUSTEES, &C.,
vs.
DUBUQUE AND PACIFIC RAILROAD COMPANY et al. } 512. Chancery.

MONDAY, *February 11th*, 1861.

In this case the plaintiffs filed affidavit of publication, and other service of notice, and moved for a default against the defendants other

than The Dubuque and Pacific Railroad Company; thereupon James C. Patrick, Bridge, Dygert & Orrell, and Richards, Crumbaugh & Shaw, appeared by Bissel, Mills & Shaw; Haskell, Barker & Aldridge, appeared by W. T. Barker; Hartfort & Brother, Gage, Dater, & Sloan, and George A. Shannon, appeared by Barney, Barker, Chaplin & Dillon; Lane & Bodly appeared by McCeeney; Patrick Nay appeared by Lovell & Williams; The Monticello Bank appeared by W. B. Allison; Patrick O'Conner appeared by Mulkern; and W'm L. Dayton and James T. Sherman appeared by Wilson, Utley & Doud. All other defendants, being solemnly called, came not, but herein wholly make default.

It is thereupon ordered, considered, and adjudged that the decree of foreclosure heretofore entered against The Dubuque and Pacific Railroad Company be held firm and effectual forever against the defendants Bank of Old Dominion, Rock Island Coal and Coke Company, and Johnson & Barrows, and they are hereby forever barred and foreclosed of any equity of redemption in the Dubuque and Pacific Railroad land grants and other properties described in said former decree; and that as to the defendants who now appear, the cause stands continued.

District court, Dubuque County.

M. K. JESUP, TRUSTEE,
vs.
DUBUQUE AND PACIFIC RAILROAD CO. ET AL. } 512. Chancery.

SATURDAY, *March 23d*, 1861.

This cause coming up on the motion of D. N. Cooley, a stockholder in the Dubuque and Pacific Railroad Company, to be made a party
868 defendant, and asking time to set up his claim and answer in said case, said motion being supported by his affidavit, is sustained. It is therefore ordered that the said Cooley be made a party defendant, and he is allowed until the 2nd day of the next term of the court to answer in this case.

District court, Dubuque County.

MORRIS K. JESSUP ET AL., TRUSTEES, &C.,
v.
DUBUQUE AND PACIFIC RAILROAD COMPANY et al. } 512. Chancery.

SATURDAY, *May 24th*, 1860.

It is ordered by the court this case be referred back to H. S. Jennings, to examine the books of the company, concerning the matters testified to by C. H. Booth, and report whether or no said books show the facts.

869 District court, Dubuque County.

M. K. JESUP ET AL., TRUSTEES, &C.,
v.
DUBUQUE AND PACIFIC RAILROAD COMPANY et al.

WEDNESDAY, *July 9th*, 1862.

In this case the matter of defense of D. N. Cooley was reported on by

H. S. Jennings, master, and exceptions were filed by said Cooley to said report, which exceptions were argued by said Cooley for himself, and by Platt Smith for plaintiff, and the same having been duly considered by the court, they are now overruled. Thereupon it is ordered, adjudged, and decreed that the report of said H. S. Jennings be confirmed; to which said Cooley excepts at the time.

Plaintiffs move for confirmation of the report of D. S. Wilson, master, in this case. Therenpon it is now ordered, adjudged, and decreed, that the decree of foreclosure heretofore rendered in this case be confirmed as to all parties, and that the report of David S. Wilson, the first master in this case, be confirmed; and the title to said railroad, land grant, and other properties is hereby confirmed in the said Dubuque and Sioux City Railroad Company, according to the terms and conditions set forth in the deed made by the Dubuque and Pacific Railroad Company and said trustees to the Dubuque and Sioux City Railroad Company, on 21st August, 1860, a copy of which is annexed to said D. S. Wilson's report.

And it is further ordered, adjudged, and decreed that said Herman Gelpcke, Platt Smith, and W. W. Hamilton be, and they are hereby, discharged from the trust under the mortgage and deed of trust made to secure the construction bonds of said Dubuque and Pacific Railroad Company, and that Morris K. Jesup is likewise discharged from said trust, except as to his accountability for the sum of $2,999 58 mentioned in said report. And further ordered, adjudged, and decreed that the Dubuque and Sioux City Railroad Company, having accepted the said deed from said trustees and the Dubuque and Pacific Railroad Company, are entitled to have and obtain from said Jesup payment of said sum of $2,999 58, and interest from the first day of January, 1861, or a proper and satisfactory account of the same, to be approved by this court; and that they, the Dubuque and Sioux City Railroad Company, shall pay the debts owing by said trustees, and interest, as the same appears in the exhibits to said D. S. Wilson's report, and any other debts of said trustee (if such there be) that may hereafter be established in accordance with law.

And it is further ordered, adjudged, and decreed that the secretary of the Dubuque and Sioux City Railroad Company (who is now present in court) shall give notice by publication for four consecutive weeks in the Dubuque Times and Dubuque Herald, as also in the American Railroad Journal, requiring all persons who hold any construction bonds of the Dubuque and Pacific Railroad Campany, to present the same within sixty days from the last day of publication, at the office of the Dubuqe and Sioux City Railroad Company, in Dubuque, for conversion into preferred stock of last company; otherwise, that the company will be under no obligation to convert the same. And that said secretary file proof of such publication for the further action of this court.

870 And it is further ordered, adjudged, and decreed that the Dubuque and Sioux City Railroad Company pay all costs of this case.

THE STATE OF IOWA, *Dubuque County, ss:*

I, J. F. Bates, clerk of the district court in and for the county and State aforesaid, do hereby certify that the foregoing is a true, correct, and examined copy and transcript of all the record entries in the foregoing entitled cause, in which Morris K. Jesup, et al., trustees, &c., are plaintiffs, and the Dubuque and Pacific Railroad Company et al., are defendants, as fully as the same remain of record in my office.

In testimony where*fore*, I have hereunto set my hand and affixed the seal of said district court, at my office in the city of Dubuque, this second day of May, A. D. 1863.

[L. S.] J. F. BATES,

Clerk of the District Court of Dubuque County, Iowa.

After the said decree of foreclosure was entered, the plaintiff, as trustees, and the Dubuque and Pacific Railroad Company united in a conveyance to the Dubuque and Sioux City Railroad Company of all the railroad, land grant, and other property mentioned in said deeds of trust and decree.

Neither the State of Iowa, nor the Des Moines Navigation and Railroad Company, nor the plaintiff in this suit, were parties in the suit or proceedings in which said decree was rendered.

The Dubuque and Sioux City Railroad Company was incorporated under the laws of Iowa, by articles of incorporation filed 13th August, 1860.

Article 1 of its articles of incorporation was as follows:

ARTICLE I. E. F. Bishop, Morris J. Jesup, Herman Gelpcke, John Lord, Platt Smith, Frederick Schuchardt, Thomas E. Walker, C. H. Booth, J. P. Farley, Richard Bonson, W. W. Hamilton, H. L. Stout, Edward Stimson, Stephen Hempstead, Roswell B. Mason, William G. Stewart, Wilson G. Hunt, Governeur Morris, Lucius P. Starr, and John Kennedy, and their associates, and all such persons as shall hereafter become stockholders in the company hereby incorporated, form themselves into a body corporate, under the name and style of the Dubuque and Sioux City Railroad Company, for the purpose of acquiring all of the rights, privileges, property, and franchises of the Dubuque and Pacific Railroad Company, and to complete and operate said road.

Under said proceedings, decree, and conveyance the said Dubuque and Sioux City Railroad Company claim to have acquired a title to all the lands granted by Congress to Iowa by the act of 15th May, 1856, for the purpose of aiding to construct a railroad "from the city of Dubuque to a point on the Missouri River near Sioux City;" and they claim thus to have acquired title to every alternate section of land, designated by odd numbers, lying within six miles of the line or route of the Dubuque and Pacific Road, as located, and consequently that they thus acquired title to the lands mentioned in the declaration in this suit.

The said Dubuque and Sioux City Railroad Company has conveyed to other parties portions of the said lands.

The following is a copy of one of said conveyances, embracing the lands mentioned in the declaration of this suit:

Know all men by these presents, that the Dubuque and Sioux City Railroad Company, in consideration of one hundred and seven thousand dollars received by them of George J. Forrest, Frederick C. Gebhard, and William J. Barney, trustees, have bargained and sold, and by these presents do bargain, sell, and convey unto the said George J. Forrest, Frederick C. Gebhard, (both of the city of New York,) and William J. Barney, (of the city of Chicago, Illinois,) trustees as aforesaid, their heirs, assigns, and other legal representatives, forever, the following described lands, to wit:

(Here follows a description by section, town, and range of 106,998.73 acres, including the lands mentioned in the declaration in this suit.)

Reserving to said railroad company the right of way across said lands, with full and free right to locate said railroad thereon, to borrow earth,

stone, or gravel, for construction, and to deposit waste earth thereon when necessary: To have and to hold the said lands to the said George J. Forrest, Frederick C. Gebhard, and William J. Barney, trustees, their heirs, assigns, and other legal representatives in fee-simple, absolute forever. The said railroad company will warrant and defend said premises to said grantees, their heirs, assigns, and other legal representatives, against the lawful claims of all persons whomsoever.

871 In testimony the president and secretary of said company sign their names this twelfth day of November, 1863, and the corporate seal is thereto affixed.

[SEAL.] EDWARD STIMSON, *President.*
JAMES M. McKINLAY, *Secretary.*

The above is recorded on pages 428, 429, and 430, of deed-book E, of the records of Webster County, Iowa.

At the date of said foreclosure proceedings and decree, and of the last above-mentioned conveyance, no portion of said railroad mentioned in the act of Congress of the 15th of May, 1856, had been completed to any point within one hundred miles of any portion of the lands mentioned in said conveyance.

Dated ———

The evidence on both sides thereupon was closed.

The court charged the jury that the evidence was all clear, and there was no dispute about the facts. The records of the land department of the State of Iowa, and of the respective corporations all agreed. The case therefore presented a question of law only.

The court further charged that, although the defendants may not have had a good title to the land in question at the time they executed their deed to the plaintiff, yet they held at that time a deed of the land from the State of Iowa in fee-simple, and the subsequent resolutions of 1861, and act of Congress of 1862, vested a good title in the State, which immediately enured to the defendants, and through them to the plaintiff, so that the plaintiff took a good title to the land.

The court further charged that, by the order of the Commissioner of the General Land Office, made June 1, 1849, and the several proceedings thereupon had, appearing in evidence, the lands in question were reserved by competent authority within the meaning of the act of Congress of May 15th, 1856, and such reservation continued in force until at and after the passage of that act, and the lands in question therefore came within the exception of that act, and were not affected by anything therein contained and thus the title remained in the United States until the passage by Congress of the resolution of 1861, and the act of 1862. To this portion of the charge the plaintiff's counsel excepted.

The court thereupon directed the jury to find for the defendants. To which direction the plaintiff's counsel excepted.

The jury thereupon found a verdict for the defendants.

And because the said exceptions do not appear by the record of said issue and trial, the said judge who tried the cause, on the prayer of the plaintiff, has set to the bill of exceptions his seal, this 27th day of October, A. D. 1865.

[L. S.] S. NELSON.

(Indorsed:) U. S. circuit court, southern district of New York. Samuel G. Wolcott vs. The Des Moines Navigation and Railroad Company. Bill of exceptions. J. W. Gilbert, attorney. Filed Nov. 3, 1865.

We consent to the within proposed bill of exceptions, and that it be submitted to Judge Nelson for settlement, without notice to us.

W. & C. TRACY & TALLMADGE,
Def't's Att'ys.

OCTOBER 31, 1865.

Supreme Court of the United States, of December term, A. D. 1865.

SAMUEL G. WOLCOTT
vs.
THE DES MOINES NAVIGATION AND RAILROAD Company

Afterwards, to wit, on the first Monday of December, in this same term, before the justices of the Supreme Court of the United States, at the Capitol in the city of Washington, comes the said Samuel G. Wolcott, by Jasper W. Gilbert, his attorney, and says that in the
872 record and proceedings aforesaid there is manifest error, in this, to wit: That by the record aforesaid it appears that the judgment aforesaid given was given for The Des Moines Navigation and Railroad Company against the said Samuel G. Wolcott, whereas by the law of the land the said judgment ought to have been given for the said Samuel G. Wolcott against the said Des Moines Navigation and Railroad Company, and the said Samuel G. Wolcott prays that the judgment aforesaid may be reversed, annulled, and altogether held for nothing, and that he may be restored to all things which he hath lost by occasion of the said judgment, &c.

JASPER W. GILBERT,
Pl'ff's Att'y.

(Indorsed:) Supreme Court of the United States. Samuel G. Wolcott vs. The Des Moines Navigation and Railroad Company. Assignment of errors. J. W. Gilbert, attorney for plaintiff. Filed Nov. 21, '65.

Supreme Court of the United States.

THE DES MOINES NAVIGATION AND RAILROAD Company
ads.
SAMUEL G. WOLCOTT. } In error.

And the said Des Moines Navigation and Railroad Company, by William and Charles Tracy & Tallmadge, their attorneys, freely come here into court, and say that there is no error, either in the record and proceedings aforesaid, nor in the giving of the judgment aforesaid; and they pray that the said Supreme Court of judicature, before the justices thereof now here, may proceed to examine as well the record and proceedings aforesaid as the matters aforesaid above assigned for error, and that the judgment aforesaid, in form aforesaid given, may be in all things affirmed, &c.

W. & C. TRACY & TALLMADGE,
Att'ys for Def'ts.

(Indorsed:) Supreme Court of the U. S. The Des Moines Navigation and Railroad Company ads. Samuel G. Wolcott. Joinder in error. W. and C. Tracy & Tallmadge, def'ts' attorneys. Filed Nov. 21, '65.

873 *Bond for costs.*

Circuit court of the United States of America for the southern district of New York, in the second circuit.

SAMUEL G. WOLCOTT, PL'FF IN ERROR,
vs.
THE DES MOINES NAVIGATION AND RAILROAD Company, def't in error.

Know all men by these presents that we, W. Howard Wait, of the city of New York, and Benjamin F. Jervis, of the same place, are held and firmly bound unto the above-named The Des Moines Navigation and Railroad Company in the sum of two hundred and fifty dollars, to be paid to the said The Des Moines Navigation and Railroad Company; for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals and dated the 11th day of November, in the year of our Lord one thousand eight hundred and sixty-five.

Whereas the above-named Samuel G. Wolcott has prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled suit by the judge of the circuit court of the United States for the southern district of New York:

Now, therefore, the condition of this obligation is such, that if the above-named Samuel G. Wolcott, shall prosecute his said writ of error to effect, and answer all damages and costs if he shall fail to make his plea good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

W. HOWARD WAIT.
B. F. JERVIS.

Sealed and delivered, and taken and acknowledged, this 11th day of Nov'r, 1865, before me.

JOHN WHIPPLE, J'R,
Notary Public, N. Y.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

W. Howard Wait and Benj'n F. Jervis, being duly sworn, depose and say, each for himself, that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.

W. HOWARD WAIT.
B. F. JERVIS.

Sworn to this 11th day of Nov'r, A. D. 1865, before me.

JOHN WHIPPLE,
Notary Public, N. Y.

The above sureties are sufficient, and all exception to them is waived.
[L. S.] W. & C. TRACY & TALLMADGE, *Att'ys.*

Approved.

CHA'S L. BENEDICT.

Filed this 11th day of Nov'r, 1865.

By the Honorable Charles L. Benedict, one of the judges of the circuit court of the United States for the southern district of New, York in the second circuit, to The Des Moines Navigation and Railroad Company:

Whereas, there was lately issued out of the circuit court of the United States a writ of error directed to the judge of the said circuit court of the United States for the southern district of New York, stating that, in the record and proceedings, as also in the rendition of the judgment of a plea in the said court, before the judge thereof, between Samuel G. Wolcott, plaintiff, and The Des Moines Navigation and Railroad Company, defendant, a manifest error hath happened, to the great damage of the said Samuel G. Wolcott; and whereas, for the correction of that error in due manner, the said writ has been issued returnable at the next stated term of the Supreme Court of the United States, to be held at the city of Washington on the 1st Monday of December next, you are, therefore, hereby cited to appear before the said Supreme Court at the city of Washington, on the said 1st Monday of December next, to do and receive what may appertain to justice to be done in the premises.

874 Given under my hand, at the city of New York, in the southern district of New York, in the second circuit, the 13th day of November, in the year of our Lord one thousand eight hundred and sixty-five, and of the independence of the United States the ninetieth.

CHA'S L. BENEDICT.

(Indorsed:) Due and timely service of a copy of the within is hereby admitted.

Dated November 13, 1865.

W. & CHA'S TRACY & TALLMADGE.

Filed November 14, 1865.

Filed in the Supreme Court Nov. 27th, 1865.

875 XCVIII. *The record in the case of Burr v. The Des Moines Navigation and Railroad Company, et al.*

DES MOINES NAVIGATION & R. R. CO.
versus
CALVIN BURR.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the circuit court of the United States for the southern district of New York, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you or some of you, between Calvin Burr, plaintiff, and The Des Moines Navigation and Railroad Company, defendants, a manifest error hath happened, to the great damage of the said defendants, as is said, and as appears by their complaint, we, being willing that such error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the justices of the Supreme Court of the United States, at

the Capitol, in the city of Washington, together with this writ, so that you have the same at the said place, before the justices aforesaid, on the first Monday of December next, that, the record and proceedings aforesaid being inspected, the said justices of the Supreme Court may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States ought to be done.

Witness the Honorable Samuel Nelson, a justice of the Supreme Court of the United States, this twenty-first day of November, in the year of our Lord one thousand eight hundred and sixty-four, and of the independence of the United States the eighty-ninth.

KENNETH G. WHITE,
Clerk of the Circuit Court of the United States of America, for the Southern District of New York, in the Second Circuit.

TRACY & OLMSTEAD,
Attorneys for the said Company, New York.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

By virtue of the within writ of error, and in obedience thereto, I, Kenneth G. White, clerk of the circuit court of the United States of
876 America for the southern district of New York in the second circuit, do hereby certify that the following folios, from one to 202, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of Calvin Burr vs. The Des Moines Navigation and Railroad Company, as the same remains of record and on file in said office.

In testimony whereof, I have hereunto caused the seal of the said court to be affixed at the city of New York, in the southern district of New York, in the second circuit, this 28th day of November, in the year of our Lord one thousand eight hundred and sixty-four, and of the independence of the United States the eighty-ninth.

KENNETH G. WHITE, *Clerk.*

Filed, Nov. 24, 1861.

United States circuit court, southern district of New York.

Pleas before the justices of the United States circuit court for the southern district of New York, at the city hall of the city of New York, in said district, on the first of November, in the year of our Lord
877 one thousand eight hundred and sixty-four—present, Hon. W'm D. Shipman, justice; Kenneth G. White, esq., clerk.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Be it remembered that, on the first day of November, in the year of our Lord one thousand eight hundred and sixty-four, before the justices of said United States circuit court for said southern district of New York, at the city hall, in the city of New York, comes Calvin Burr, by Jasper W. Gilbert, his attorney, and brings into said court, before the aforesaid justices thereof, now here, his certain declaration against The Des Moines Navigation & Railroad Company, being in custody, &c., of a plea of breach of covenant, which said declaration follows in these words, that is to say:

In the circuit court of the United States for the southern district of New York.

CALVIN BURR
ag't
THE DES MOINES NAVIGATION AND RAILROAD Company.

CITY AND COUNTY OF NEW YORK, *ss:*

Calvin Burr, a citizen of the State of New York, complains of
878 The Des Moines Navigation and Railroad Company, being a corporation created by and under the laws of the State of Iowa, and organized and residing in said State of Iowa, and being in custody, &c., of a plea of breach of covenant, for that, whereas heretofore, to wit, on the fifteenth day of November, in the year of our Lord one thousand eight hundred and fifty-eight, to wit, at Des Moines, in said State of Iowa, by a certain deed-poll there and then made by the defendants, which said deed-poll, sealed with the seal of said defendants, the plaintiff now brings into court here, the date whereof is the day and year aforesaid, it was witnessed that the said defendants, in considera-
879 tion of the sum of seventeen thousand eight hundred and sixty-eight dollars and eighty cents, to them in hand paid by the said plaintiff, did thereby grant and convey to the said plaintiff the following tracts of land in said State of Iowa, to wit: All of section nine, in township eighty-nine, range twenty-eight, and all of section twenty-one, in township eighty-nine, range twenty-eight, containing together twelve hundred and eighty acres; and the said defendants, in and by the said deed-poll, there and then, in consideration of aforesaid, did warrant the title of said land against all persons whomsoever, and did thereby covenant to and with the plaintiff that the said defendants then had, and that the said plaintiff, by reason of the said deed-poll, did and would receive and take, a good and perfect title in fee to the said tracts of land, and each thereof, as by the said deed-poll, reference being thereto had, will more fully and at large appear; yet the said plaintiff in fact saith that the said defendants then and there had no title whatever to the said tracts of land, or either thereof, nor any part thereof, and that the plaintiffs did not then or there, or at any time afterward, by reason of the said deed-poll, or otherwise, receive, obtain, or take any title whatsoever to the said tracts of land or either thereof, but that the said defendants, to fulfil their said warranty of the title to said lands, and to cause the said plaintiff to receive, obtain, or take a good and perfect title in fee to the said tract of land, although often requested so to do by the said plaintiff, have hitherto wholly neglected, and still do neglect and refuse. Of all which the said defendants had notice, and so the said plaintiff in fact saith that the said defendants, although often requested to, have not kept the said covenants so by *these* made as aforesaid, but have broken the same, to the damage of the said plaintiff thirty thousand dollars; and thereof the said plaintiff brings his suit, &c.

J. W. GILBERT,
Att'y for Pl'ff.

And the said defendants, by Tracy & Olmsted, their attorneys, come and defend the wrongs and injury, when, &c.; and as to the supposed breach of covenant above assigned and alleged by the said plaintiff, *then* the said defendants say that the said plaintiff ought not to have

or maintain his aforesaid action thereof against them, the said defendants, because, they say that they, the said defendants, before and at the time of the making of the said indenture in the said plaintiff's declaration above mentioned, were seized in fee of the said tracts of land, and did then and there, by the said indenture, convey to the said plaintiff a good and perfect title in fee to the same; and this the said defendants are ready to verify. Wherefore the said defendants pray judgment if the said plaintiff ought to have or maintain his aforesaid action against them, &c.

And, for a further plea in this behalf, the said defendants, by leave of the court here for this purpose first had and obtained according to the form of the statute in such case made and provided, say that the said plaintiff ought not to have or maintain his aforesaid action thereof against them, because, they say that the said defendants, after making the said indenture in the said declaration mentioned, and before the commencement of this suit, to wit, on the first day of August, 1862, acquired and took a title and estate in fee in the said tracts of land, which said last-mentioned title and estate, by the common law of the State of Iowa, and also by the statutes of the said State of Iowa, did forthwith enure to and vest in the said plaintiff, as the grantee
880 of the said defendants by the said indenture, and that, by means of the premises the said plaintiff, before the commencement of this suit, did receive and take a good and perfect title in fee to the said tracts of land, of all which the said plaintiff had notice, without this, that the said plaintiff suffered any damage by means of anything in the said declaration mentioned; and this the said defendants are ready to verify. Wherefore they pray judgment if the said plaintiff ought to have or maintain his aforesaid action thereof against them, &c.

U. S. circuit court, southern D. of N. Y.

CALVIN BURR
a'gt
THE DES MOINES NAVIGATION AND RAILROAD Company.

And the plaintiff, by his attorney aforesaid, as to the said plea of the said defendants by them first above pleaded, says that he, said plaintiff, ought not, by reason of anything in that plea alleged, to be *bound* from having or maintaining his aforesaid action, because, he says, that the said defendants, at the said time when, &c., were not seized in fee of the said tracts of land, nor did they convey to the said plaintiff any title thereto in manner and form as in that plea in that be*lief* alleged; and this the said plaintiff prays may be enquired of by the country, &c. And the said defendants do the like.

And the said plaintiff, by his attorney aforesaid, as to the said plea of the said defendants by them secondly above pleaded, says that, *in* the said plaintiff, *or* not, by reason of anything in that plea alleged, to be *bound* from having or maintaining his aforesaid action thereof, because, he says, that the said defendants did not, at the said time, when, &c., acquire or take any title or estate, nor did such supposed title or estate vest in the said plaintiff, nor did the plaintiff receive or take any title whatsoever in manner and form as in that plea alleged; and this the said plaintiff pray' may be enquired of by the country, &c. And the said defendants do the like.

J. W. GILBERT,
Pl'ff Att'y.

Therefore, the issues above joined are ordered by the circuit court of the United States for the southern district of New York to be tried at a stated term of said court appointed to be held at the city hall, of the city of New York, on the day of , in the year of our Lord one thousand eight hundred and sixty-four, and place last above-named, before Hon. Shipman, one of the justices of said court, according to the form of the statute in said case made and provided.

Came as well the above-named plaintiff as the above-named defendant, by their respective attorneys above-mentioned; and the jurors of jury summoned to try the said issue, being called, also came, who, to speak the truth of the matters aforesaid being chosen, tried, and sworn, say upon their oath that the said defendant is guilty of the several breaches of covenant above laid to its charge, in manner and form as the said plaintiff hath above in that behalf alleged against the said defendant; and the said jury assess the damages of the said plaintiff, by reason of the premises, over and above his costs and charges by him in and *above* his suit in this behalf expended, to the sum of twenty-four thousand two hundred and fifty-five $\frac{76}{100}$ dollars, and for these costs and charges to six cents.

881 Therefore, it is considered that the said plaintiff do recover against the said defendant his said damages, costs, & charges by the jurors aforesaid, in form aforesaid, assessed, and also thirty-eight and $\frac{35}{100}$ dollars for his costs and charges by the said court now here adjudged of increase to said plaintiff, and with his assent, which said damages, costs, & charges in the whole amount to twenty-four thousand two hundred and ninety-four & $\frac{11}{100}$ dollars.

And the said defendants in mercy, &c.

Judgment signed this 21st November, 1864.

R. E. STILWELL,
Dep. Clerk.

Filed Nov. 2, 1864.

U. S. circuit court, S. D. N. York.

THE DES MOINES NAVIGATION AND RAILROAD Company
ads.
CALVIN BURR.

This action was tried at the term of court held at the city of New York, on the first, second, and third days of November, one thousand eight hundred and sixty-four, before the Honorable William D. Shipman, judge, with a jury.

882 The counsel for plaintiff, to sustain the evidence on his part, gave evidence that the plaintiff was a citizen of the State of New York, and the defendants were a corporation created by the State of Iowa, and also put in evidence a deed, of which the following is a copy, viz:

For and in consideration of seventeen thousand eight hundred and sixty-eight & $\frac{80}{100}$ dollars, the Des Moines Navigation & Railroad Company, a corporation organized under the laws of the State of Iowa, doth hereby grant, and convey to Calvin Burr, of the city and State of New York, the following tracts of land in the State of Iowa, to wit, in Webster County, all of section nine, in township eighty-nine, range twenty-eight, containing six hundred and forty acres; also, all of section twenty-one, in township eighty-nine, range twenty-eight, being a

total of twelve hundred and eighty acres; and the said Des Moines Navigation and Railroad Company, doth hereby warrant the title against all persons whomsoever.

In witness whereof, R. S. Burrows, president, and William B. Welles, treasurer, of said company, having been hereunto duly authorized, hereunto set their hands and affix the seal of said company, this fifteenth day of November, in the year one thousand eight hundred and fifty-eight.

883 R. S. BURROWS, *President.*
[SEAL.] W. B. WELLES, *Treasurer.*

STATE OF NEW YORK, *County of New York, ss:*

I certify that I, the subscriber, am a commission' for Iowa, in and for the State of New York; that, on the seventeenth day of February, 1859, personally appeared before me, R. S. Burrows, president, and W'm R. Welles, treasurer, personally to me known to be the identical persons whose names are affixed to the within deed as grantors, and acknowledged the instrument to be their voluntary act and deed. Given under my hand and official seal on the day and date above written.

[SEAL.] JA'S C. PATTERSON,
Commissioner for Iowa in New York.

The plaintiff's counsel also gave evidence that the consideration-money mentioned in said deed, with interest from its date until the trial of this action, amounted to $24,254 96, and he claimed to recover said consideration-money and interest.

The counsel for the defendants, to sustain the issue on their part, put in evidence the act of Congress, entitled "An act granting certain lands to the Territory of Iowa to aid in the improvement of the Des Moines River, in said Territory," passed Augu't 8, 1846, also gave in evidence that the grant made by said act of Congress was fully accepted by the legislature of the State of Iowa, for the purpose therein expressed, and everything was done on the part of the State of Iowa necessary to perfect its title under said act, and that agents afterwards were duly appointed by the governor of said State, who selected the sections designated by odd numbers throughout the whole extent of the grant, such selections embracing all the sections of the public lands designated by odd numbers then remaining unsold and not otherwise disposed of, incumbered, or appropriated, lying in said Territory or State of Iowa, within a strip five miles in width on eaeh side of the river Des Moines, from its mouth to its source, at or above the northern boundary of said State; that the said selections by odd numbers was approved by the Secretary of the Treasury of the United States; that the lands mentioned in the declaration in this suit are a part of the lands so selected and approved, and are within the limit of what was the Territory of Iowa, on the 8th of August, 1846, and are within five miles of the Des Moines River, but are situated above the Raccoon Fork of said river, and do not lie between said Raccoon Fork and the mouth of said river; that the general assembly of Iowa, on the 24th *fo* February, 1847, provided for the election of a board of public works, consisting of a president, a secretary, and treasurer, and committed to such board the whole subject of receiving and managing the said lands and providing for the construction of the improvement mentioned in said act of Congress, and that said board was duly elected August 2, 1847, and was organized and went into operation September 22d, 1847. To the admissibility of each of which facts the plaintiff's

counsel objected; but the court overruled the objection and received the evidence.

The defendant's counsel offered in evidence a letter, written by the Commissioner of the General Land Office to said board of public works, on the 23d of February, 1848. The plaintiff's counsel objected to the admission of said letter, but the court overruled the objection and admitted the same, and it was put in evidence, being as follows:

884 [The original paper here sets out the letter of Commission' Young to Corkery, as secretary of the board of public works, of February 23rd, 1848, No. IX hereof.]

The defendant's counsel gave in evidence that, without notice of change of opinion, a proclamation was issued June 19, 1848, signed by the President of the United States, and countersigned by the Commission' of the General Land Office, ordering into market some of the lands lying above Raccoon Fork, which would belong to said State, according to the rule laid down in said letter of February 23rd, 1848. The sale took place October 16th, 1848. To the admissibility of each of which facts the plaintiff's counsel objected, but the court overruled the objection and received the evidence.

The defendant's counsel offered in evidence a letter written by said board of public works, through its secretary, to the Commissioner of the General Land Office, dated September 18th, 1848. The plaintiff's counsel objected to the admissibility of said letter, but the court
885 overruled the objection & admitted the same, and the same was read in evidence, being as follows:

[The letter of Charles Corkery, secretary, to Commission' Young, September 18th, 1848. Printed in Exhibit VII of the plaintiff's bill, transcript, page 57; of this record, page 45, & referred to above in No. X.]

The defendant's counsel offered in evidence a protest of the same date. To the admissibility of which the plaintiff's counsel objected; but the court overruled the objection and admitted the same, and it was received as evidence, being as follows:

[The letter of Charles Corkery, secretary, to C. Neely, register, September 18, 1848. Printed in Exhibit No. VII of plaintiff's bill, on page 58; of this record, page 46, and referred to above, in No. XI.]

The defendant's counsel offered in evidence a letter, written by the Senators and Representatives in Congress, from the State of
886 Iowa to the Secretary of the Treasury, dated January 8th, 1849. To the admissibility of which the plaintiff's counsel objected; but the court overruled the objection and admitted the letter, and it was read in evidence, being as follows:

[The letter of A. C. Dodge, George W. Jones, Shepard Leffler, & William Thompson to the Hon. Robert J. Walker, January 8th, 1849. Printed in Exhibit VII of plaintiff's bill, transcript, page 59; of this record, page 46, and referred to above in No. XII.]

The defendant's counsel offered in evidence the response of the Secretary of the Treasury, dated March 2nd, 1849. To the admissibility of which the plaintiff's counsel objected; but the court overruled the objection and admitted the same, and it was read in evidence, being as follows:

[The letter of R. J. Walker, Secretary of the Treasury, to A. C. Dodge, G. W. Jones, S. Leffler, and W. Thompson, dated March 2nd,

1849. Printed in Exhibit No. VII of plaintiff's bill, transcript, page 61; of this record, page 48, and referred to above in No. XIII.]

The defendant's counsel gave in evidence that the Secretary of the Treasury, on the same day, transmitted a copy of his letter of that date to the Commissioner of the General Land Office, and accompanied it with an order of the same date, which also the defendant's counsel offered in evidence. The plaintiff's counsel objected to the admissibility of such fact and such order; but the court overruled the objection and admitted the same, and said order was also read in evidence, being as follows:

887 [Letter of R. J. Walker, Secretary, to R. M. Young, Commissioner, March 2nd, 1849. Set out as No. XIV above.]

The defendant's counsel offered in evidence a communication from the Commissioner of the General Land Office, dated June 1, 1849. To the admissibility of which plaintiff's counsel objected; but the court overruled the objection and admitted the same, and it was read in evidence, being as follows:

[Letter of Richard M. Young to the register and receiver at Iowa City, June first, 1849, No. XV above.]

The defendant's counsel offered in evidence a letter from the Commissioner of the General Land Office, dated December 19th, 1849. The plaintiff's counsel objected to the admissibility thereof, but the court overruled the objection and admitted the same, and it was read in evidence, being as follows:

[Letter of Commissioner Butterfield to Jesse Williams, December 19th, 1849. Printed in Exhibit VII to plaintiff's bill, transcript, page 63; of this record, page 49, and referred to in No. XVIII above.]

888 The defendant's counsel gave in evidence that, on the 11th of January, 1850, the Commissioner of the General Land Office made a report to the Secretary of the Interior, showing the amount of land which had been granted to the several States for internal improvements, & that the amount charged to Iowa in said report is 825,078 acres, and that the following note is contained in said report, in reference to said lands so charged to Iowa, as follows: "This amount, in accordance with the decision of the Secretary of the Treasury of the second of March, (1849), eighteen hundred & forty-nine, will be increased by the unadjusted portion of the grant for the improvement of the Des Moines River, situated between the Raccoon Fork and the source of said river, estimated to contain about 900,000 acres;" and that, on the 13th March, 1850, the Commissioner of the General Land Office submitted to the Secretary of the Interior three several lists of land; the first of which had the following heading:

"No. 1, showing the tracts falling within the limits of the Des Moines grant above the Raccoon Fork, &c., under the decision of the Secretary of the Treasury of March 2nd, 1849."

(The plaintiff's counsel objected to the admissibility of each of said facts, but the court overruled the objection and received the evidence.)

The defendant's counsel put in evidence the following decision of the Secretary of the Interior:

889 [The letter of Secretary Ewing to the Commissioner of the General Land Office, April 6th, 1850. Printed in Exhibit VII to plaintiff's bill, transcript, page 65; of this record page 49, and referred to in No. XXI above.]

The defendant's counsel gave in evidence that, on the 14th April, 1850,

the Senators and Representatives from Iowa protested against said decision, and appealed from it to the President of the United States, and the President referred the matter to the Attorney General, Mr. Reverdy Johnson. The Attorney General, on the 19th July, 1850, made his report on the matter so referred, giving it fully, in his opinion, that, by the terms of the grant itself, it extended along the Des Moines River up to its very source; that before the said opinion was promulgated, or any further action was taken upon this matter, the question was submitted to a new Attorney General, Mr. Crittenden, who, on the 30th June, 1851, decided that, in his opinion, the grant did not extend above the Raccoon Fork, and that the Secretary of the Interior, (Mr. A. H. H. Stuart,) at first, July 26, 1851, concurred in Mr. Crittenden's opinion, but afterwards consented to bring the whole matter before the President and Cabinet; and after its consideration there, a decision was made which is indicated in the letter of Mr. Stuart, dated October 29, 1851, which letter the defendant's counsel offered in evidence. The plaintiff's counsel objected to the admissibility of each of said facts and of said letter, but the court overruled the objection and received the evidence, and said letter was read in evidence, as follows:

[Letter of Secretary Stuart to the Commissioner of the General Land Office, October 29, 1851. Printed in Exhibit VII to plaintiff's bill, transcript, page 65; of this record, page 50, & referred to] in No. XXXIV above.]

The defendant's counsel gave in evidence that, on the following day, namely, October 30, 1851, three lists of lands were prepared in the General Land Office, the purposes of which, as stated in the heading, being as follows: "List No. 1, showing the tracts falling within the limits of the Des Moines grant above the Raccoon Fork of the Des Moines River, so far as the surveys have extended, under the decision of the Secretary of the Treasury of 2d March, 1849, that such grant extended to the north boundary of the State." "List No. 2, showing tracts disposed of within those limits in the interval between the date of one of the previous orders limiting the grant and one of those extending it above the fork." "List No. 3, showing the vacant lands subject to the claim of the State;" and that the third of said lists, on being presented to the Secretary of the Interior, received his approval, with an explanatory statement, and the defendant's counsel offered said approval and statement in evidence. The plaintiff's counsel objected to the admissibility of the said several facts and of said approval and statement; but the court overruled the objection, and received the evidence and said note, and said note was read in evidence, being as follows:

890 DEPARTMENT OF THE INTERIOR,
October 30th, 1851.

The selections embraced in the within list (No. 3) are hereby approved, in accordance with the views expressed in my letter of the 29th instant to the Commissioner of the General Land Office, subject to any rights which may have existed at the time the selections were made known to the Land-Office by the agents of the State, it being expressly understood that this approval conveys to the State no title to any tract or tracts which may have been sold or otherwise disposed of prior to the receipt, by the local land officers, of the letter of the Commissioner of the General Land Office, communicating the decision of Mr. Secretary Walker, to the effect that the grant extended above the Raccoon Fork.

ALEX. H. H. STUART,
Secretary.

The defendant's counsel gave in evidence that the following amounts of lands were approved and certified at the following times to the State of Iowa under the grant of August 8th, 1846, all lying above the Raccoon Fork, viz:

October 30th, 1851	214,391.58 acres.
March 10th, 1852	143,908.36 acres.
December 17th, 1853	33,142.48 acres.
December 30th, 1853	12,813.51 acres.
	404,255.89

And that among such lands so certified and approved were the lands mentioned in the declaration in this suit, and that the following is the heading of the list which was approved by the Secretary of the Interior on the 17th of December, 1853, together with the terms of approval. A similar heading and approval was appended to the list approved on the 30th of the same month: "A list showing the vacant lands in the odd-numbered sections above the Raccoon Fork and within five miles of the Des Moines River, so far as the surveys have progressed, falling to the State of Iowa under the act of the 8th of August, 1846, as construed by the Secretary of the Treasury in his letter of the second of March, 1849, and of the Secretary of the Interior of the 29th of October, 1851, which have not heretofore been approved," and that said list was approved in these words:

DEPARTMENT OF THE INTERIOR,
December 17, 1853.

The selections in the within list are hereby approved to the State of Iowa under the act of the 8th of August, 1846, without prejudice to the rights, if any there be, of other parties.

R. MCCLELLAND; *Secretary.*

(To the admissibility of each of which facts the plaintiff's counsel objected; but the court overruled the objection & received the evidence.)

The defendant's counsel offered in evidence a letter written
891 by the Secretary of the Interior. August 23rd, 1852. The plaintiff's counsel objected to the admissibility of such letter; but the court overruled the objection and admitted the same, and the same was read in evidence, being as follows:

"DEPARTMENT OF THE INTERIOR,
"*Washington, August* 23, 1852.

"SIR: I have examined the question involved in the appeal of the Hons. A. C. Dodge, Geo. W. Jones, and Bernhart Henn, of Iowa, from the judgment of the Commissioner of the General Land Office in relation to their application for the issue of patents on the sales and locations of portions of the odd-numbered sections along the Des Moines River above the Raccoon Fork, which had been made prior to the receipt by the district land officers, of Mr. Secretary Walker's decision of the 2d March, 1849, and have to state that, as I approved the selections above the Raccoon Fork with the express understanding that that approval should not convey to the State any title to tracts which might have been sold or otherwise disposed of prior to the receipt of Mr. Walker's decision, the issuing of patents on the sales and locations in question is in

perfect accordance with the views expressed in my letter to the Commissioner of the 29th of October last, and the terms of approval of the selections on the following day.

"I am, sir, very respectfully, your obedient servant,

"ALEX. H. H. STUART, *Secretary.*

"The ACTING COMMISSIONER OF THE GENERAL LAND OFFICE."

The defendant's counsel offered in evidence a letter written by the Commissioner of the General Land Office, January 6, 1854. The plaintiff's counsel objected to the admissibility thereof, but the court overruled the objection and admitted the same, and it was read in evidence, being as follows:

[Letter of Commissioner Wilson to Benton, superintendent, &c., Jan'y 6, 1854. Printed in Exhibit VII of plaintiff's bill, transcript, page 68; of this record, page 52.]

The defendant's counsel gave in evidence that the lands given by the United States to Iowa on its becoming a State, by the general act of Congress passed September, 1841, giving 500,000 acres to each new State on its coming into the Union, were devoted by the State of Iowa to educational purposes; that 12,813.51 acres had been selected under that act from among the sections of odd numbers lying within five miles of the Des Moines River and above the Raccoon Fork, which same lands, according to the construction of the act of August 8, 1846, prevailing at the date of said letter of January 6, 1854, had been previously appropriated by Congress to the Des Moines River improvement, and that, upon such fact coming to the knowledge of the General Land Office, notice was given to the State superintendent of public instruction that the State was entitled to select an equal quantity of land elsewhere in lieu of what had been erroneously so selected for school purposes as part of the State's five hundred thousand acres. The plaintiff's counsel objected to the admissibility of each said fact; but the court overruled the objection and received the evidence.

The defendant's counsel gave evidence that, on the 21 March, 1856, the Commissioner of the General Land Office decided that the grant by the act of August 8, 1846, did not extend above the Raccoon Fork, and thereupon the matter was brought before the Secretary of the Interior, and by him was referred to the Attorney General, Mr. Cushing, who delivered an extended opinion thereon, and the defendant's counsel offered said opinion in evidence. The plaintiff's counsel objected to the admissibility of each of said facts and of said opinion; but the court overruled the objection and received the evidence, and the defendant's counsel read said opinion in evidence, the material parts of which are as follows:

892 [The extract from the opinion of the Attorney General, quoted in this bill of exceptions, will be found in Exhibit VII to plaintiff's bill, transcript, pages 69; of this record page 53.]

The defendant's counsel offered in evidence a communication from the Secretary of the Interior, dated June 9, 1856.

The plaintiff's counsel objected to the admissibility thereof, but the court overruled the objection and admitted the same, and the same was read in evidence, being as follows:

[Letter printed in Exhibit VII of plaintiff's bill, transcript 79; of this record, on page 59, and referred to in No. LIII above.]

The defendant's counsel gave evidence that application to the Secre-

tary of the Interior subsequently was made by Mr. R. Johnson, for the issue of patents for lands which had been certified and approved to the State of Iowa under the act of August 8th, 1846, and that the Secretary made reply thereto in writing November 10, 1856, and the defendant's counsel offered to read said reply in evidence. The plaintiff's counsel objected to the admissibility of said facts and said reply, but the court overruled the objection and admitted the evidence, and the defendant's counsel read said reply in evidence, being as follows:

[Letter of Secretary McClelland to R. Johnson. Printed in No. LV above.]

893 The defendant's counsel gave in evidence that, among the lands approved and certified to the State of Iowa under said act of 8th August, 1846, on or prior to the 30th Dec., 1853, were the lands mentioned in the declaration in this suit; that no lands have been so certified and approved under said act since December 30, 1853; that all the lands which were so certified and approved to the State of Iowa, were by the General Land Office at Washington, always thereafter, (up to the time when the decisions of the Supreme Court of the United States on the construction of the act of August 8th, 1846, was rendered at the December term of 1859–1860,) reserved from sale or pre-emption, and were by said Land Office considered and held, and on its files and maps were indicated, as appropriated to the special purpose of satisfying the said grant of 8th August, 1846, and as having passed to the State under said grant, and the acts of the Government thereunder; and that, after the making of said grant by the act of Congress of August 8, 1846, the State proceeded from time to time, as in said act authorized, to sell and dispose of said lands, applying the proceeds to the improvement of the Des Moines River, as contemplated in said act, and on 9th June, 1854, the State, by its authorized agents, made a contract with the said defendants, The Des Moines Navigation and Railroad Company, in and by which the said company agreed to finish said improvement, as contemplated in said act of Congress, and specified in said contract, and to expend for that purpose all necessary sums, to the amount of $1,300 00, and in consideration of such contract and expenditure, and in payment for the same, the State sold and agreed to convey to said company, from time to time, and in the manner provided by said act of Congress, the whole balance of the lands which had been certified and approved to the State under said act, and which then remained unsold, and all other land which should be thereafter certified and approved to the State of Iowa under said act; that among the lands thus sold to said company were the lands mentioned in the declaration in this suit; that after the making of said contract the said company proceeded with the work upon said improvement, and as the said improvement progressed, and in accordance with said act of Congress, the State, from time to time, by its regular and authorized officer, issued to said company in payment for work done by it upon said improvement, and in pursuance of the aforesaid contract, sundry certificates, in form and substance as follows:

OFFICE REGISTER OF THE
DES MOINES RIVER IMPROVEMENT,
Ottumwa, May 14, 1855.

I certify that the following lands were sold by me on this day of to the Des Moines Navigation and Railroad Company, in pursuance of the contracts and agreements with the said company for the construction of the said Des Moines River improvement, to wit:

(Here follows a long list of lands set forth specifically by section, township, and range, together with the number of acres in each tract, respectively, including the lands mentioned in the declaration in this suit.)

(Signed) GEORGE GILLESPIE, *Register*, &c.

That the said George Gillespie was at the said dates register of the Des Moines improvement, and was the proper person to transfer said lands and issue the said certificates, and that the General Land Office decided, in 1856, not to certify any more lands to the State under the grant of 8th August, 1846, and that thereupon the said defendants suspended work upon said improvement. To the admissibility of each of which facts the plaintiff's counsel objected, but the court overruled the objection and received the evidence.

894 The defendant's counsel offered in evidence a joint resolution of the general assembly of the State of Iowa, passed March 22nd, 1858. The plaintiff's counsel objected to the admissibility thereof, but the court overruled the objection and received the evidence, and the same was read in evidence, being as follows:

[Printed in Exhibit IX to plaintiff's bill, transcript, page 116; of this record, page 82, & referred to above as No. LVII.]

The defendant's counsel gave in evidence that the Des Moines Navigation and Railroad Company ratified and accepted the propositions for a contract, in said resolutions contained, in the manner, and within the time therein provided for; that the company paid to the State the sum of $20,000 in cash, and released and conveyed to the State the dredge-boat and materials in the resolution mentioned, which were of the cash value of more than $100,000, and in all respects on its part complied with the terms of settlement expressed in said resolution. To the admissibility of each of which facts the plaintiff's counsel objected, but the court overruled the objection and received the evidence.

The defendant's counsel offered in evidence a patent or deed executed May 18, 1858. The plaintiff's counsel objected to the admissibility thereof, but the court overruled the objection and the said deed or patent was read in evidence, being as follows:

[Printed in Exhibit 9 to plaintiff's bill, transcript, page 119; of this record, page 84, and referred to in No. LXVI above.]

895 The defendant's counsel gave in evidence that the State of Iowa caused said deed or patent to be duly recorded in Iowa, and a duplicate or copy of it to be filed in the office of the Commissioner of the General Land Office at Washington, with a list of the lands intended to be conveyed thereby, amounting to 213,483.30 acres, including the two sections mentioned in the complaint in this suit. To the admissibility of which facts the plaintiff's counsel objected, but the court overruled the objection and received the evidence.

The defendant's counsel offered in evidence another deed or patent, executed May 3d, 1858.

The plaintiff's counsel objected to the admissibility thereof, but the court overruled the objection, and the said deed or patent was read in evidence, being as follows:

[Printed in Exhibit IX to plaintiff's bill, transcript, pages 119–121; of this record, page 84, and referred to in No. LXVI above.]

The defendant's counsel gave in evidence that the decision of the Supreme Court of the United States, interpreting the act of August 8th, 1846, in the case of Litchfield vs. The Dubuque & Co., (reported in

23rd Howard, 66,) was pronounced at the December term of 1859–1860. To the admissibility of which fact the plaintiff's counsel objected, but the court overruled the objection and received the evidence.

The defendant's counsel read in evidence the joint resolutions
896 of the Congress of the United States, passed March 2nd, 1861, and the act of Congress passed July 12th, 1862, the plaintiff's counsel objecting to the admissibility thereof, but the court overruled the objection and received the said resolution and act in evidence.

The defendant's counsel put in evidence, from the statutes of Iowa, section 2210 of the code of Iowa, revision of 1860, in these words:

"Where a deed purports to convey a greater interest than the grantor was, at the time, possessed of, any after-acquired interest of such grantor, to the extent of that which the deed purports to convey, enures to the benefit of the grantee."

The plaintiff's counsel gave in evidence the act of Congress passed May 15, 1856, entitled "An act making a grant of lands to the State of Iowa, in alternate sections, to aid in the construction of certain railroads in said State;" and also an act of the general assembly of the State of Iowa, passed July 14, 1856, entitled "An act to accept of the grant and carry into execution the trust conferred upon the State of Iowa by an act of Congress entitled 'An act making a grant of lands to the State of Iowa, in alternate sections, to aid in the construction of railroads in said State,' approved May 15th, 1856." The plaintiff also gave in evidence that said last-mentioned act was duly published in the papers therein mentioned. To the admissibility of which said two acts, and of such fact of publication, the defendant's counsel in time objected, but the court overruled the objections and received the evidence, and the defendant's counsel excepted to such decision.

The plaintiff's counsel also gave in evidence the articles of incorporation of the Dubuque and Pacific Railroad Company. To the admissibility of which the defendant's counsel objected, but the court overruled the objection and received the evidence, to which decision the defendant's counsel objected. The said articles were then read in evidence, the first article whereof being as follows:

"L. H. Langworthy, H. W. Sandford, Platt Smith, John J. Dyer, J. P. Farley, R. B. Mason, F. V. Goodrich, Robert C. Waples, M. Mobley, G. R. West, Asa Horr, F. S. Jessup, Edward Stimson, George W. Jones, Robert Waller, Robert Schuyler, and their associates, and all such persons as shall hereafter become stockholders in the company hereby incorporated, hereby form themselves into a body-corporate under the name and style of the Dubuque and Pacific Railroad Company, for the purpose of constructing a railroad from some point in the city of Dubuque; thence westerly on the best route towards the Pacific Ocean."

The plaintiff's counsel offered in evidence certain resolutions of said Dubuque and Pacific Railroad Company, passed in July, 1856, and filed with the secretary of state of Iowa. To the admissibility of which the defendant's counsel objected, but the court overruled the objection and received the evidence, and the defendant's counsel excepted to such decision. Said resolutions were therefore read in evidence, being as follows:

897 *Resolved*, That the Dubuque and Pacific Railroad Company hereby assent to and accept the provisions of an act enacted by the general assembly of the State of Iowa, and approved July , 1856, entitled "An act to accept of the grant to carry into execution the trust conferred upon the State of Iowa by an act of Congress entitled 'An act making a grant of lands to the State of Iowa, in alternate sections,

to aid in the construction of railroads in said State,' approved May 15th, 1856."

Resolved, That the president and secretary of the Dubuque and Pacific Railroad Company be, and they hereby are, required to affix their signatures to the above resolutions, and have the same filed in the office of the secretary of the State of Iowa forthwith.

[SEAL.] J. P. FARLEY, *President.*

Attest:

H. P. LEACH, *Secretary of D. & P. R. R. Co.*

The defendant's counsel offered in evidence a letter from the acting Commissioner of the General Land Office, dated August 20th, 1856.

The plaintiff's counsel objected to the admissibility of said letter, but the court overruled the objection & received the evidence. The letter was then read in evidence, being as follows:

[Letter of Commissioner Wilson to McCleary, sec'y of state, Aug. 20, 1856. Printed in Exhibit VIII of plaintiff's bill, transcript, pages 109, 110; of this record, page 78.]

The plaintiff's counsel offered in evidence a certificate of the Dubuque and Pacific Railroad Company, dated September 27, 1856, and filed with the secretary of the State of Iowa September 30, 1856. To the admissibility of which the defendant's counsel objected. The court overruled the objection and received the evidence, and the defendant's counsel excepted to such decision. The said certificate was then read in evidence, being as follows:

898 [The certificate of J. P. Farley, president & B. B. Provoost, engineer, Sept. 27, 1856. Printed in Exhibit VIII of the plaintiff's bill, transcript page 111; of this record, page 79.]

The plaintiff's counsel gave in evidence that the land mentioned in the declaration in this suit lies within six miles of the line or route of the road shown on the map or plot thereof, mentioned in said certificate, and that said route or line shown on said map or plot is on the general route of the road designated by the act of Congress of May 15, 1856. To the admissibility of which facts the defendant's (in time) counsel objected, but the court overruled the objection and received the evidence, and the defendant's counsel excepted to such decision.

The defendant's counsel gave evidence that, at the time of the passing of said Iowa statute of July 14, 1856, and on the filing of said certificate on the 30th of September, 1856, no portion of the railroad of the Dubuque and Pacific Railroad Company had been actually constructed, and no part of said road was completed until May 11th, 1857, when the first thirty miles extending westerly from Dubuque, were opened for business, and during the year 1857 eight miles more were completed, and said Dubuque and Pacific Railroad Company did not have 75 miles of said road completed and equipped within three years from the first day of December, 1856, or thirty miles in addition in each year thereafter, as required by the aforesaid act of the general assembly of Iowa, passed 14th July, 1856; that said railroad had not been completed to any point nearer than one hundred and ten miles distant from said land at the time of the passage of the joint resolution of Congress on 2d March, 1861, and it had not been completed to any point nearer than ninety miles distant from said land at the time of the passage of the act of Congress of 12th July, 1862; that the general assembly of the State of Iowa, on the 7th of March, 1860, passed an act as follows:

An act extending the time for completion of 75 miles of road by the Dubuque and Pacific Railroad Company.

Whereas it has been represented that the Dubuque and Pacific Railroad Company did not complete seventy-five continuous miles of said road by the first day of December last, as required by the eighth section of the act approved 14th July, 1856, commonly called the land-
899 grant act, but have since completed the same: Therefore—

"SEC. 1. *Be it enacted by the general assembly of the State of Iowa*, That the subsequent completion of said seventy-five miles shall be deemed a substantial compliance with the provisions of said section by said company."

That, on the 26th of March, 1860, the said general assembly passed another act, as follows:

An act entitled an act declaratory of the meaning of an act for extending the time of completion of seventy-five miles of road by the Dubuque and Pacific Railroad Company, approved 7th March, 1860.

Whereas the first section of the said act above recited reads as follows:

"*Be it enacted by the general assembly of the State of Iowa*, That said subsequent completion of said seventy-five miles shall be deemed a substantial compliance with the provisions of said section by said company:" Now, therefore—

SECTION 1. *Be it enacted by the general assembly of the State of Iowa*, That said first section shall be considered, and is hereby declared to mean, that said completion of said seventy-five miles by said company shall be deemed a substantial compliance by said company with that portion of said eighth section which required seventy-five miles of said road to be finished by the first day of December last.

900 That the Secretary of the Interior has certified and approved to the State of Iowa, under the act of May 15th, 1856, in all, 2,540,024 $\frac{64}{100}$ acres, of which quantity 1,147,481 $\frac{7}{100}$ acres have been for and on account of the road, mentioned in said act of Congress, from the city of Dubuque to a point on the Mississippi River, near Sioux City; and that the State of Iowa has not conveyed to said Dubuque & Pacific Railroad Company the lands mentioned in the declaration in this suit, or any of the lands so certified and approved to the State under the act of 8th August, 1846, by any deed or patent, nor by any other means, unless said act of the general assembly of 14th July, 1856, should be deemed a conveyance thereof, and it has not in any manner transferred or conveyed, or attempted to transfer or convey, any lands or any of them, to said Dubuque and Pacific Railroad Company, or to any other party whatsoever, except to the Des Moines Navigation and Railroad Company, unless it be by said act of 14th July, 1856.

(To the admissibility of which several acts the plaintiff's counsel objected, but the court overruled the objection & admitted the evidence.)

901 The plaintiff's counsel gave in evidence an act of the general assembly of the State of Iowa, passed January 28th, 1857, entitled as follows:

An act supplementary to an act entitled "An act to accept of the grant and carry into execution the trust conferred upon the State of Iowa by an act of Congress entitled "An act making a grant of lands to *to* the State of Iowa, in alternate sections, to aid in the construction of railroads in said State, approved May 15th, 1856;" which said act of the legislature of Iowa was approved July 14th, 1856.

The defendant's counsel objected to the admissibility of said act, but the court overruled the objection and received the evidence, and said act was read in evidence, and the defendant's counsel excepted to such decision.

The plaintiff's counsel offered in evidence a certain mortgage, executed March 14th, 1857, by said Dubuque and Pacific Railroad Company, to Abram S. Hewit and others, trustees, to secure the payment of $12,000,000 of bonds, which said company proposed to issue, and a deed of trust executed by said company June 9th, 1859, to said trustees, confirming the grant made by said mortgage. The defendant's counsel objected to the admissibility of said mortgage and said deed, but the court overruled the objections and received them as evidence, and the defendant's counsel excepted to such decision. The said mortgage and deed were then read in evidence, the description of the premises in both being as follows:

"Also, all right, title, interest, claim, or demand which said party of the first part now has or hereafter shall acquire in or to all public lands of the United States granted by act of Congress approved 15th of May, 1856, to the State of Iowa, and by the general assembly of said State of Iowa, by act approved July 14th, 1856, granted to said Dubuque and Pacific Railroad Company, the party of the first part, subject, however, to the terms and conditions of the said acts of Congress and of the general assembly of the State of Iowa, with all the estate, right, title, and interest, property, possession, claim, or demand whatever, at law or in equity, of the said parties of the first part in and to the same and each and every part or parcel thereof, excepting, saving, and reserving to the party of the first part all lands now owned or hereafter to be acquired by them which may not be included in the said grant of public land from the United States, and may not be necessary for the uses and purposes of said railroad, and the depots and right of way thereof." And the plaintiff's counsel also read in evidence from said deed of trust the following passages, viz:

"This indenture is made for the further purpose of insuring to the party of the second part not only all the title that said railroad company now has, but all the title which may hereafter be acquired, or which may be perfected or certified to said company; and said party of the first part hereby covenants and agrees to forever warrant and defend the title of said lands to the parties of the second part, their successors and assigns, against the lawful claims and demands of all persons whomsoever; also, that the said lands are free from all incumbrances done or suffered by the party of the first part, except the mortgage before recited, executed to the party of the second part on the 14th day of March last, for the purpose of securing the identical construction-bonds herein mentioned; that said party of the first part now has all the title and right which was granted by Congress to the State of Iowa, and by said State to the party of the first part.

"And said party of the first part further covenants and represents that said party has full and ample power and lawful authority, according to legal usage in the State of Iowa and the United States, to make, execute, and deliver this deed and said mortgage, heretofore executed

on the 14th day of March last, for the purpose of securing said construction bonds, and that, according to said laws and usage, all subse-
902 quent rights which may be perfected to said lands will enure by estoppel to the sole use and benefit of the party of the second part; that this right and lawful authority exists by express legislation, as well as by usage and legal construction, as may be seen by reference to the several acts of the general assembly of the State of Iowa in this respect made and provided.

"And the said party of the first part further covenants and represents that all the laws, usages, and acts of the general assembly, and provided or bearing relation to this subject, shall be considered as part and parcel of this contract and deed, the same as though such laws and usages were herein set forth at large; and further, that it is a well-settled principle of law in the United States of America, and the State of Iowa, that such laws and usages do enter into and become a part of the contract without reciting or referring to the same; and that no subsequent legislature can pass any act that will abrogate, repeal, or impair the rights of the party of the second part."

The plaintiffs gave in evidence that the Dubuque and Pacific Railroad Company made default in the conditions of said mortgage, and
903 the same was foreclosed, and, upon foreclosure sale, all the rights which passed by said mortgage were, before March 2, 1861, sold to & purchased by the Dubuque and Sioux City Railroad Company, a corporation organized under the laws of Iowa. To the admissibility of which facts the defendants in time objected, but the court overruled the objection and received the evidence, and the defendant's counsel excepted to such decision.

The plaintiff's counsel offered in evidence the articles of incorporation of said last-mentioned railroad company as filed in the office of the secretary of the State of Iowa, August 13th, 1860. The defendant objected to the admissibility thereof, but the court overruled the objection and received the evidence, and the defendant's counsel excepted to such decision. The said articles were read in evidence, the first article thereof being as follows:

"ARTICLE 1. E. F. Bishop, Morris K. Jessup, Herman Gelpcke, John Lord, Platt Smith, Frederick Schuchardt, Thomas E. Walker, C. H. Booth, J. P. Farley, Richard Bonson, W. W. Hamilton, H. L. Stout, Edward Stimson, Stephen Hempstead, Roswell B. Mason, William G. Stewart, Wilson E. Hunt, Governeur Morris, Lucius P. Starr, and
904 John Kennedy, and their associates, and all such persons as shall hereafter become the stockholders in the company hereby incorporated, form themselves into a body corporate, under the name and style of the Dubuque and Sioux City Railroad Company, for the purpose of acquiring all of the rights, privileges, property, and franchises of the Dubuque and Pacific Railroad Company, and to complete and operate said road."

The plaintiff also gave in evidence that the said Dubuque & Sioux City Railroad Company claimed to have acquired by said mortgage, foreclosure, and sale, a title to all the lands mentioned in the act of Congress of May 15th, 1856, in connection with the construction of a railroad "from the city of Dubuque to a point on the Missouri River, near Sioux City," including every alternate section, designated by odd numbers, lying within six miles of the line or road *of the line or road* of the Dubuque and Pacific Railroad as located, and including the lands described in the declaration in this suit.

To the admissibility of which facts the defendant's counsel in time

objected, but the court overruled the objection and received the evidence, and the defendant's counsel excepted to such decision.

905 The plaintiff's counsel gave in evidence that said company last named had conveyed to other parties portions of said lands, including the lands described in the declaration in this suit. One of the deeds given in such conveyance being as follows:

To the admissibility of which facts, and said deed, the defendants' counsel in time objected; but the court overruled the objection, and received the evidence, and the defendants' counsel excepted to such decision.

Copy of deed from Dubuque and Sioux City Railroad Company to Fritz Gelpcke, Edward Stimson, John Lord, and Schuckhardt, and Gephardt, in book D, Webster County (Iowa) records, page 695, filed for record June 22d, 1861.

Know all men by these prese'ts that the Dubuque and Sioux City Railroad Company, of the State of Iowa, for and in consideration of the sum of twenty thousand dollars to them in hand paid by Fritz Gelpcke, and the further sum of ten thou'and dollars paid by Edward Stimson, and the further sum of ten thousand dollars paid by John Lord, and the further sum of three thousand five hundred dollars paid by Schuckhar't and Gephart the receipt of which several sums of money is hereby acknowledged, doth hereby grant, bargain, and sell, alien, enfeoff, and convey unto the said Edward Stimson, his heirs and assigns forever, the lands mentioned and described as follows:

Part of.	Sec.	Town.	Range.	Acres.
All	1	88	28	780.40
All	3	88	28	719.04
All	5	88	28	692.31
N. E. ¼ and E. ½	7	88	28	240
All	9	88	28	640
All except lot 7	7	89	28	541.43
E. ½ and N. W. ¼	9	89	28	480
All	11	89	28	640
W. ½ N. E. ¼, W. ½, W. ½ S. E. ¼ and S. E. ¼ S. E. ¼	13	89	28	520
All	15	89	28	640
S. E. ¼	17	89	28	160
All	5	88	29	733.08
All	7	88	29	612.48
All	1	89	29	601.90
All	3	89	29	627.90
All	5	89	29	611.26
E. ½	7	89	29	320
All	9	89	29	1,280
All	11	89	29	
N. E. ¼	13	89	29	640
W. ½ and S. E. ¼	15	89	29	
S. Ward, E. ½	21	89	28	480
All	23	89	28	1,920
All	25	89	28	
All	27	89	28	
All	31	89	28	657.34
All	33	89	28	1,280
All	35	89	28	
N. E. ¼, N. E. ¼	1	88	29	61.61
Lot 1, 7, and 8	1	88	29	94.97
S. E. S. E., W. ½ S. E., and W. ½ S. W.	1	88	29	200
All	3	88	29	727.92
All	17	89	29	640
N. E. of N. E.	19	89	29	40
All	21	89	29	1,280
All	23	89	29	
S. E. ¼ and W. ½	25	89	29	480
All	27	89	29	640
E. ½ and N. W., E. ½ S. W.	29	89	29	560
All	33	89	29	1,280
All	35	89	29	
				21,750.95

Reserving, however, to the said company the right of way for their road across said lands, with full & free power to construct and locate the same:

To have and to hold the above-granted premises to the said Edward Stimson, his heirs and assigns, to his and their use and behoof, and to the use and behoof of the said Fritz Gelpcke, John Lord, Schuckhar't and Gephar't, and their heirs and assigns forever, in the
906 proportion in which they have paid the purchase price of said lands above mentioned.

Witness the hands of Herman Gelpcke, president, and James McKinlay, secretary, of the Dubuque and Sioux City Railroad Company, and the corporate seal of said company hereto affixed, this 11th day of February, A. D. 1861.

And the said company doth covenant to warrant and defend the said premises unto the said Edward Stimson, and to his heirs and assigns forever, against the lawful claims of all persons whomsoever.

[L. S.] HERMAN GELPCKE,
President.
JAMES McKINLAY,
Secretary.

Certificate of acknowledgment before—
DAVID A. McKINLAY,
Notary Public, Dubuque.

The defendant's counsel also gave in evidence that, at the date of the conveyance last above contained, namely, February 11th, 1861, no portion of the railroad from Dubuque to the Missouri River, near Sioux City, mentioned in the act of Congress of May 15th, 1856, had been completed to any point to within one hundred and ten miles of any part of the lands mentioned in the deed last above given, in the dec-
907 laration in this suit.

To the admissibility of which facts the plaintiff's counsel objected; but the court overruled the objection, and received the evidence.

The foregoing evidence being all offered, both parties rested.

The defendants requested the court to charge and instruct the jury that the defendants were entitled to a verdict; but the court refused so to charge and instruct, and the defendants' counsel excepted to such refusal.

The plaintiffs' counsel requested the court to charge and instruct the jury that the plaintiffs were entitled to their verdict, and to damages to the amount of the consideration-money mentioned in the declaration, with interest from the date of the deed there mentioned.

The defendants' counsel, among other things, requested the court to charge the jury:

First. That, upon all the evidence before them, the lands in question, before the passage of the act of May 15th, 1856, had been reserved to the United States by competent authority, and were included in
908 the reservation or exception contained in the first section of said act.

Second. That the act of May 15, 1856, was not an absolute grant conferring a title in presenti to the State.

Third. That no title could vest in the State under that until the route of the railroad which it should aid was definitely fixed by permanent location, and total or partial construction of the railroad; and no

such definite fixing of the route had taken place as to give operation to the grant by said act.

Fourth. That the Iowa statute of July, 1856, in respect of the location of the railroads therein mentioned, was not authorized by the act of Congress of May 15th, 1856, nor in conformity thereto, and has no effect to vest, or aid in vesting, a title in the railroad companies.

Fifth. That, no railroad having been completed to any point within twenty miles of the land mentioned in the declaration of this suit before the passage of the resolution of Congress, March 2d, 1861, or the act of Congress of July 12th, 1862, the title could not have passed to any railroad company before the passage of said resolution or said act.

Sixth. That the act of May 15th, 1856, conferred on the State a naked power in trust, which Congress might at any time revoke, and the same was revoked by the resolution of March 2d, 1861, and act of July 12th, 1862.

Seventh. That a removal of the reservation of the lands in question, subsequent to the passage of the act of May 15th, 1856, by the decision of the Supreme Court, or by any other means, could not come to the grantees under that act, or confer any title to such reserved lands.

Eighth. If a title in said lands vested in the State of Iowa by virtue of the act of May 15th, 1856, then the subsequent conveyances by the State vested the title in the defendants as purchasers, and the defendants are not bound to show an application by the State of the proceeds of the lands to the purposes mentioned in said act.

The court refused to charge as proposed in said several propositions otherwise than is contained below, and the defendants excepted to such refusal.

The court then delivered to the jury the following charge:

GENTLEMEN OF THE JURY: You will see that the conclusions to which I have come upon the questions raised by the evidence in this case dispose of all except one, and that relative to the damages only, which I will submit to you. I therefore charge you—

1. That no title to the lands in question passed to the Territory of Iowa by virtue of the act of Congress approved August 8th, 1846, these lands lying above the Raccoon Fork of the Des Moines River. This point has been already settled by the Supreme Court of the United States in the case of The Dubuque and Pacific Railroad Company vs. Litchfield, 23 of How. Rep., 66.

909 2. That none of the acts of the executive officers of the United States which have been proved, nor all of them taken together, had any effect to extend the operation of the act of August 8th, 1846, over these lands, nor in any manner to confer a title to them, either at law, or, strictly speaking, in equity, upon the Territory or State of Iowa, or upon these defendants. This result follows from the decision of the Supreme Court already cited.

3. That these acts of the executive officers of the United States, proved and relied on in this case, did not reserve to the United States these lands for the purpose of aiding in any other objects of internal improvements, or for any other purpose whatsoever, and therefore they are not drawn within the proviso of the act of May 15th, 1856. These official acts were not prompted or guided by any such intention. Those of them which proceeded upon the idea that these lands were embraced in the grant of August 8th, 1846, were mere errors arising out of a misconstruction of the terms of that grant. They were, no doubt, made in good faith, and for the purpose of formally fixing and defining rights

supposed to have been already granted by Congress. But as these acts, according to the case, 23d of How., 66, exceeded the grant made by Congress, they were void. These acts were intended as acts of transfer, and not acts of reservation. To now attribute to them the effect of having reserved these lands to the United States, that is, set them apart for the use of the Government itself, would be reserving the natural consequences originally intended to flow from them. Such a construction of these acts, I think, would be arbitrary, and neither warranted by any circumstances presented by the evidence, or by the settled rules of law. All these acts, therefore, left the lands in question in the same status in which they had always remained. That status was unchanged, not only in fact, but in contemplation of law. The lands were neither sold, granted, nor reserved to the United States for any purpose, but remained in the great body of the public domain, subject to the control of Congress and to the operation of the laws in force regulating the disposition of the public lands.

4. If these views are correct, then the lands in question were embraced in the body of the act of May 15th, 1856, and the title passed by that grant to the State of Iowa in trust. The State took the lands in trust, and by an express provision of the act they were to "be applied to no other purpose whatsoever" than that of aiding in the construction of certain railroads therein named. It is unnecessary to say that the defendants' enterprise is not one of those named in the act as those to which the application of the lands granted is expressly restricted. Whether or not a title in presenti passed to the State on the passage of this act I do not deem it necessary now to determine; but I think it is quite certain that that act placed these lands in such a position that they were not reached by the resolutions of Congress of March 2, 1861, and July 12, 1862, upon which the defendants rely. To conclude otherwise would be to hold that these joint resolutions repeal pro tanto, without any express provisions—by implication merely—the public act of May 15th, 1856. A construction by which the repeal of a statute by implication is sought to be established is never favored, especially where private rights are concerned.

5. These views being legal conclusions drawn from facts conceded in the case, or established by uncontradicted evidence, cover the whole controversy, except the question of damages. It is my duty, therefore, to direct you to find a verdict for the plaintiff, and assess the damages which he has proved he has suffered from the failure of his title to these lands. The rule by which you will be guided will be the amount of the consideration paid, with interest from the day of payment to the present time, at the rate of six per cent. per annum.

The defendants' counsel excepted to that part of the charge concerning the effect of the act of August 8th, 1846, contained in the second proposition or section of said charge; and also excepted to that part of the charge contained in the third proposition or section thereof; and also excepted to that part of the charge contained in the fourth proposition or section thereof; and also to that part of the charge contained in the fifth proposition or section thereof.

The court thereupon charged and instructed the jury to find a verdict for the plaintiff; to which charge and instructions the defendants' counsel excepted.

The jury found a verdict in favor of the plaintiff, and assessed his damages at $24,254 90.

And because the said several exceptions do not appear by the record of the said trial, the said presiding judge, on the prayer of the defend-

ants, has set to this bill of exceptions his seal, the third day of November, one thousand eight hundred and sixty-four.

WILLIAM D. SHIPMAN. [L. S.]

Filed Nov. 21, 1864.

910 Bond for costs.

UNITED STATES OF AMERICA,
For the Southern District of New York, in the Second Circuit:

CALVIN BURR, PLAINTIFF,
vs.
THE DES MOINES NAVIGATION AND RAILROAD Company, defendants.

Know all men by these presents that we, Electus B. Litchfield & William Savage, are held and firmly bound unto the above-named plaintiff in the sum of five hundred dollars to be paid to the said plaintiff; for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals, and dated the 19th day of November, in the year of our Lord one thousand eight hundred and sixty-four.

Whereas the above-named defendants have prosecuted a writ of error to the Supreme Court of the United to reverse the judgment rendered in the above-entitled suit by the judge of the circuit court of the United States for the southern district of New York:

911 Now, therefore, the condition of this obligation is such, that if the above-named defendants shall prosecute said writ of error to effect, and answer all damages & costs if they fail to make said writ of error and complaint good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

E. B. LITCHFIELD. [L. S.]
W. SAVAGE. [L. S.]

Sealed and delivered & taken and acknowledged this 19th day of Nov., 1864, before me, by Electus B. Litchfield and William Savage above named, to me known to be the persons who executed the foregoing bond.

JOHN G. FLOYD, JR.,
Notary Public N. Y. City.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

Electus B. Litchfield & William Savage, being duly sworn, depose and say, and each for himself says, that he is worth the sum of one thousand dollars over and above all his just debts & liabilities.

E. B. LITCHFIELD.
W. SAVAGE.

Sworn to this 19th day of November, A. D. 1864, before me—
JOHN F. FLOYD, JR.,
Notary Public, N. Y. City.

The foregoing bond and the sureties therein named are consented as sufficient. Nov. 21, 1864.

F. W. GILBERT, *Pl'ff's Att'y.*

Approved Nov. 22, '64.

S. NELSON.

Filed this 22d of Nov., '64.

912 By the honorable one of the judges of the circuit court of the United States for the southern district of New York in the second circuit to Calvin Burr:

Whereas The Des Moines Navigation and Railroad Company, plaintiff in error, lately issued out of the Supreme Court of the United States a writ of error directed to the judge of the circuit court of the United States for the southern district of New York, stating that, in the record and proceedings, as also in the rendition of the judgment of a plea in the said court, before the judge thereof, between you, said Calvin Burr, defendant in error, as plaintiff, and said plaintiffs in error as defendants, a manifest error hath happened, to the great damage of the said plaintiffs in error; and whereas, for the correction of that error, in due manner, the said writ has been issued, returnable at the next stated term of the Supreme Court of the United States, at the city of Washington, on the fifth day of Dec'r next: You are therefore hereby cited to appear before the said Supreme Court, at the city of Washington, on the said fifty day of Dec'r next, to do and receive what may appertain to justice to be done in the premises.

Given under my hand at the city of New York, in the southern district of New York, in the second circuit, the 22d day of Nov., in the year of our Lord one thousand eight hundred and sixty-four, and of the independence of the United States the eighty-ninth.

S. NELSON.

(Endorsed:)

U. S. Supreme Court. The Des Moines Navigation and Railroad Co., pl'ffs in error, vs. Calvin Burr, def't in error. Citation. Tracy & Olmstead, attorneys.

Due service of a copy of the within citation is hereby admitted this 18th day of Nov., 1864, at No. 18 William st., in the city of New York.

Filed Nov. 22, 1864.

CALVIN BURR.

Record filed December 10, 1864.

Filed July 20, 1869. George B. Corkhill, clerk.

913 XCIX.—*Docket entries and extracts from minutes Supreme Court of the United States in Samuel G. Wolcott, plaintiff in error, v. The Des Moines Navigation and Railroad Company.*

Supreme Court of the United States. No. 336. December Term, 1864. In error to the circuit court of the United States for the southern district of New York.

Cha's Tracy. P. Smith for intervenor.

THE DES MOINES NAVIGATION & RAILROAD Company, plaintiff in error, *vs.* CALVIN BURR. } No. 336.

Docket entries.

1864, Dec. 10. Record received and filed.

No. 221. December term, 1865. Docket entries continued.

1866, Feb. 8. Motion of Mr. Allison for leave to intervene filed.
" " " Affidavit of J. M. McKinley filed.
" " 13. Leave granted the Dubuque & Sioux City R. R. Co. to intervene, &c.
" " 21. Brief of P. Smith, for intervenor, filed.

914 No. 133 of December term, 1866. Docket entries continued.

1866, Dec. 14. Mr. J. F. Dunscombe filed motion to intervene, &c.
" " 17. Leave granted Mr. Dunscombe to appear & file printed argument.
" " " No. 204 to be argued with this cause.
1867, Feb'y 8. Submitted with No. 204.
" May 13. Reversed with costs and a venire awarded.

Supreme Court of the United States. December term, 1865.

THE DES MOINE' NAVIGATION AND RAILROAD Company, plaintiff in error, *vs.* CALVIN BURR. } No. 221.

EXTRACTS FROM MINUTES.

* * * * * * * * *

On consideration of the motion made and affidavit filed in this cause, on the 8th instant, it is now here ordered by the court that leave
915 be, and the same is hereby, granted counsel of the Dubuque and Sioux City Railroad Company to appear and be heard on the argument when this cause is reached.
13th February, 1866.

No. 133 of December term, 1866.

* * * * * * * * *

THE DES MOINES NAVIGATION AND R. R. CO., pl'ff in error, *vs.* CALVIN BURR. }

On consideration of the motion of Mr. Dunscombe for leave to intervene, &c., in this cause, it is now here ordered by this court that leave be, and the same is hereby, granted Mr. Dunscombe, to intervene in behalf of the Iowa Homestead Company in the argument of this cause, and to file a printed argument.
17th December, 1866.

THE DES MOINES NAVIGATION AND RAILROAD Company, plaintiff in error, *vs.* CALVIN BURR. } No. 133.

Ordered by the court that No. 204, Samuel G. Wolcott, pl'ff in

916 error, vs. Des Moines Navigation & R. R. Co., be argued by counsel, if desired, with No. 133, when reached in the regular call of the docket.

17th December, 1866.

THE DES MOINES NAVIGATION & RAILROAD Company, plaintiff in error, *vs.* CALVIN BURR. } No. 133.

This cause was submitted to the court on the record and printed argument by Mr. Smith of counsel for intervenors, and stipulation of counsel filed to be considered with No. 204, submitted on printed arguments at the last term of this court.

8th February, 1867.

917 Supreme Court of the United States. December term, 1866.

THE DES MOINES NAVIGATION & RAILROAD Company, plaintiff in error, *vs.* CALVIN BURR. } No. 133.

In error to the circuit court of the United States for the southern district of New York.

This cause came on to be heard on the transcript of the record from the circuit court of the United States for the southern district of New York, and was argued by counsel.

On consideration whereof it is now here ordered and adjudged by this court, that the judgement of the said circuit court in this cause be, and the same is hereby, reversed with costs; and that this cause be, and the same is hereby, remanded to the said circuit court, with directions to award a venire facias de novo.

Per Mr. Justice NELSON.

Mr. Justice Miller took no part in the decision of this case.

918 True copies of docket entries, extracts from minutes, and judgements.

Test:

[SEAL.] D. W. MIDDLETON,
Clerk Supreme Court U. S.

Supreme Court of the United States. December term 1866.

THE DES MOINES NAVIGATION AND RAILROAD Company, pl'ff in error, *vs.* CALVIN BURR. } No. 221.

In error to the circuit court of the United States for the southern district of New York.

The Dubuque and Sioux City Railroad Company, a corporation, &c., by W'm B. Allison, its attorney, now comes and moves the court for leave to intervene in the above-entitled cause, and also for leave to file

an argument in same for reasons set forth in affidavit filed herewith and made a part hereof.

Dubuque & Sioux City Railroad Company.
By W'M B. ALLISON, *its Att'y.*

True copy. Test:
[L. S.]
D. W. MIDDLETON,
Clerk Sup. Court U. S.

919 Supreme Court of the United States. December term, 1865.

THE DES MOINES NAVIGATION AND RAILROAD Company, plaintiff in error,
vs.
CALVIN BURR.
} No. 221.

In error to the circuit court of the United States for the southern district of New York.

I, James McKinley, on oath say that I am an attorney and counsellor at law, and am assistant attorney of the Dubuque and Sioux City Railroad Company; that, within the past few days, and not before, I have had an opportunity to examine the record in the case above named;
920 that the said railroad company are materially interested in obtaining a correct decision of the principal point raised in said cause, and that I verily believe a decision of the point against the above-named defendant in error would prejudice the interest of said Dubuque & Sioux City Railroad Company, although not a party to the record in the above-named case. The decision made by the court below (Hon. W'm D. Shipman) is the point on which rests the title to about seventy-seven thousand acres of the land granted by Congress to aid in the construction of said Dubuque and Sioux City Railroad. Further, that I have reason to fear that said Burr is not a bona-fide litigant, but, on the contrary, is desirous of obtaining a decision against himself, with a view to prejudicing the title of the Dubuque and Sio'x City Railroad Company, and their grantees.

Record, page 31, folio 106 & 107.

Signature to the foregoing affidavit.
(S'g'd) JAMES M. McKINLEY.

Subscribed and sworn to before me, the clerk of the district
921 court of Dubuque County, Iowa, this 1st day of February, 1866.
Witness my hand and official seal.
[SEAL.] (Signed) M. LEPPER, *Clerk.*

[5-c. rev. stamp.]

True copy. Test:
[SEAL.]
D. W. MIDDLETON,
Clerk Sup. Court U. S.

(Endorsed as follows:) The Des Moines Navigation and Railroad Company, pl'ff in error, vs. Calvin Burr. Affidavit of James M. McKinley. Filed 8th Feb'y, 1866. George B. Corkhill, clerk.

922 In the Supreme Court of the United States. Dec. term, 1866.

THE DES MOINES NAVIGATION AND RAILROAD Company, plaintiff in error,
vs.
CALVIN BURR, DEF'T IN ERROR. } No. 133. Land.

Motion on behalf of the "Iowa Homestead Company" and their grantees to intervene for the purpose of argument.

Now, to wit, Dec. 14, 1866, comes The Iowa Homestead Company, and their grantees, of the State of Iowa, and by their attorney, John F. Duncombe, moves the court to permit said parties to intervene in this cause for the purpose of argument on the part of the defendant in error, and for cause state—

1. That said company and their grantees are directly interested in the decision of this cause in this, to wit: Said company and their grantees claim to be owners in fee-simple of the land named in the pleadings, and over 50,000 acres of other lands, the title to which is involved in the decision of the legal questions involved in this suit.

(Signed) J. F. DUNCOMBE,
Att'y for Intervenor.

923 True copy. Test:
[SEAL.] D. W. MIDDLETON,
Clerk Sup. Court U. S.

(Endorsed as follows:) Supreme Court U. S. Dec. term, 1866. Des Moines Navigation and Railroad Co., pl'ffs in error, vs. Calvin Burr. Motion on part of Iowa Homestead Co. to intervene for argument. Filed 14th Dec., 1866. Granted J. F. Duncombe for intervenors.

924 C.—*Docket entries and extracts from the minutes Supreme Court United States in The Des Moines Navigation and Railroad Company, plaintiff in error, v. Calvin Burr.*

Supreme Court of the United States. December term, 1865.

J. W. Gilbert. P. Smith, (for intervenor.) Cha's Tracy. Litchfield.

SAMUEL G. WOLCOTT, PLAINTIFF IN ERROR,
vs.
THE DES MOINES NAVIGATION AND RAILroad Company. } No. 303.

In error to the circuit court of the United States for the southern district of New York.

DOCKET ENTRIES.

1865. Nov. 27. Record received and filed.
" Dec. 21. Stipulation to submit filed.
" " " Brief of J. W. Gilbert, for the plaintiff in error, filed.
" " " Brief of Litchfield, for the def't in error, filed.
1866. Jan. 2. Submitted under 20th rule.

" Feb. 8. Motion of Mr. Allison for leave to intervene and also for leave to file printed argument.
" " " Affidavit of J. M. McKinley filed.
" " 13. Leave granted intervenor to file argument before 1st March.
" " 21. Brief of P. Smith, for intervenor, filed.
" " 26. On motion of Mr. Cook, leave granted him to file argument before 1st March.
" Mar. 12. Ordered to be continued to the next term, with leave to any of the parties to file additional arguments.
" " 23. Brief of Mr. B. C. Cook, for intervenor, filed.

No. 204, of December term, 1866. Docket entries continued.

1866. Dec. 4. Reply brief of Litchfield filed.
" " 17. Ordered that counsel have leave to argue this case with No. 133, if desired.
1867. May 13. Adjudged to be affirmed with costs.

925 Supreme Court of the United States. No. 303. December term, 1865.

EXTRACTS FROM MINUTES.

* * * * * * * *

SAMUEL G. WOLCOTT, PLAINTIFF IN ERROR,
vs.
THE DES MOINES NAVIGATION & RAILROAD Company. } No. 303.

This cause was submitted to the consideration of the court on the record and printed arguments by Mr. Gilbert, of counsel for the plaintiff in error, and by Mr. Litchfield, for the defendant in error, under the 20th rule.
2nd January, 1866.

SAMUEL G. WOLCOTT, PL'FF IN ERROR,
vs.
THE DES MOINES NAVIGATION & R. R. CO. } No. 303.

On consideration of the motion made and affidavit filed in this cause on the 8th instant, it is now here ordered by the court that leave be, and the same is hereby, granted counsel of The Dubuque and
926 Sioux City Railroad Company to file and submit printed arguments in this cause at any time before the first day of March next.
13th February, 1856.

SAMUEL G. WOLCOTT, PLAINTIFF IN ERROR,
vs.
THE DES MOINES NAVIGATION & R. R. CO. } No. 303.

On motion of Mr. B. C. Cook, leave granted him to file a printed argument in this cause by the first Monday of March next.
26th February, 1866.

SAMUEL G. WOLCOTT, PLAINTIFF IN ERROR, *vs.* DES MOINES NAVIGATION & RAILROAD CO. } No. 204. December term, 1866.

Ordered by the court that this cause be argued by counsel, if desired, with No. 133, when reached in the regular call of the docket.
17th Dec., 1866.

627 No. 204. Supreme Court of the United States. December term, 1866.

SAMUEL G. WOLCOTT, PLAINTIFF IN ERROR, *vs.* THE DES MOINES NAVIGATION AND RAILROAD COMPANY.

In error to the circuit court of the United States for the southern district of New York.

This cause came on to be heard on the transcript of the record from the circuit court of the United States for the southern district of New York, and was argued by counsel.

On consideration whereof it is now here ordered and adjudged by this court that the judgment of the said circuit court in this cause be, and the same is hereby, affirmed with costs.

Per Mr. Justice NELSON.

13th May, 1867.

928 Mr. Justice Miller took no part in the decision of this case.

True copies of docket entries, extracts from minutes, and judgement.

Test:
[SEAL.]

D. W. MIDDLETON,
Clerk Sup. Court U. S.

Supreme Court of the United States. No. 303. December term, 1865.

SAMUEL G. WOLCOTT *vs.* THE DES MOINES NAVIGATION AND RAILROAD COMPANY.

The counsel for the plaintiff and the counsel for the defendant hereby agree to submit, and do submit, this case upon printed arguments.

Dated December 18, 1865.

(Signed) J. W. GILBERT,
Of Counsel for Plaintiff.

929 (Signed) EDWIN C. LITCHFIELD,
Of Counsel for the Defendant.

True copy. Test:
[SEAL.]

D. W. MIDDLETON,
Clerk Sup. Court U. S.

(Endorsed as follows:) Stipulation to submit. Filed Dec. 21, 1865.

Supreme Court of the United States. December term, 1865.

SAMUEL G. WOLCOTT, PLAINTIFF IN ERROR,
vs.
DES MOINES NAVIGATION & RAILROAD COMPANY. } No. 303.

In error to the circuit court of the United States for the southern district of New York.

930 The Dubuque and Sioux City Railroad Company, a corporation, & by W'm B. Allison, its attorney, now comes and moves the court for leave to intervene in the above-entitled cause, as a party thereto, and also for leave to file an argument in same, for reasons set forth in affidavit filed herewith and made a part hereof.

Dubuque & Sioux City Railroad Company,
(Signed) By W'M B. ALLISON, *Its Att'y.*
Feb. 7, 1866.

True copy. Test:
[SEAL] D. W. MIDDLETON,
Clerk Sup. Court U. S.

(Endorsed as follows:) Samuel G. Wolcott, pl'ff in error, No. 303, vs. Des Moines Navigation and Railroad Company. Motion for leave to intervene on behalf of Dubuque & Sioux City Railroad Company. Filed 8th Feb'y, 1866. W'm B. Allison.

931 Supreme Court of the United States. December term, 1865.

SAMUEL G. WOLCOTT, PLAINTIFF IN ERROR,
vs.
DES MOINES NAVIGATION AND RAILROAD COMPANY.

In error to the circuit court of the United States for the southern district of New York.

I, James M. McKinley, on oath say that I am an attorney and counsellor at law, and am assistant attorney for the Dubuque & Sioux City R. R. Co.; that within the past few days, and not before, I have had an opportunity to examine the record in the above-named case; that, to my mind, the said record shows that the attorneys of said Wolcott either did not fully understand their case or the nature of the party opposed to them, or had been instructed not to litigate the case
932 in good faith; that the question involved in said case is one on which depends the title which the Dubuque & Sioux City Railroad Company acquired to about seventy-seven thousand acres of land, to aid in the construction of said road; that a final decision of the above-named case against the plaintiff in error would tend to greatly prejudice the said Dubuque and Sioux R. R. Co., although they are not a party to the said case; that I have reason to fear the decision of the court below (near bottom of page 61 of the record) was obtained on substantially an ex-parte presentation of the case, and is greatly prejudicial to the interest of the Dubuque and Sioux City R. R. Co., and is contrary to what would have been the decision on a proper presentation and

argument of the case. And, as aforesaid, that an affirmance of the judgement of the court below would prejudice the title acquired by said Dubuque and Sioux Company to said seventy-seven thousand acres of land and the title of their grantees.

(Signed) JAMES M. McKINLEY.

Subscribed and sworn to by James M. McKinley, before me,
933 clerk of the district court of Dubuque County, Iowa, February 1, 1866. Witness my hand and official seal.

[SEAL.] (Signed) M. LEPPER, *Clerk.*

[5-c rev. stamp.]

True copy. Test:

[SEAL.] D. W. MIDDLETON,
Clerk Sup. Court U. S.

(Endorsed as follows:) Sam'l G. Wolcott, No. 303, pl'ff in error, vs. Des Moines Navigation & Railroad Company. Affidavit of James M. McKinley. Filed 8th Feb., 1866.

934 CI. *The argument of Platt Smith, in behalf of the Dubuque and Sioux City Railroad Company, in Wolcott v. The Des Moines Navigation and Railroad Company.*

Supreme Court of the United States. December term, 1866.

SAMUEL G. WALCOTT, PLAINTIFF IN ERROR,
vs.
DES MOINES NAVIGATION AND RAILROAD CO., defendants in error. } No. 204.

Arguments of Platt Smith, who intervenes in behalf of the Dubuque and Sioux City Railroad Company.

Both of these cases come up from the circuit court of the United States from the southern district of New York. They are both
935 upon the same identical issues, and substantially upon the same state of facts. They are both suits brought against The Des Moines Navigation and Railroad Company to recover damages for alleged fa'lure of title to certain lands in Iowa conveyed by defendants below to the plaintiffs below by warrantee deed. The plaintiffs below are citizens of the State of New York, and the defendants below is a citizen of Iowa.

The lands in dispute lie within five miles of the Des Moines River, and above the mouth of the Raccoon Fork, and in the alternate odd-numbered sections; and they also lie within the six and fifteen mile limit of the Dubuque and Sioux City Railroad Company, and are included in the act of Congress, granting lands to Iowa, passed May 15, 1856. The Des Moines Navigation and Railroad Company claim title to these lands under an act of Congress, passed August 8th, 1846, granting lands to Iowa to aid in the improvement of the navigation of the Des Moines River, and under grants and deeds from the State of Iowa to said company, and also under a joint resolution of Congress, passed March 2, 1861, an' under an act of Congress, passed July 12th, 1862.

The Dubuque and Sioux City Railroad Company claim title to

936 the same lands under an act of Congress, passed May 15th, 1856, granting lands to Iowa to aid in the construction of certain railroads and grants from the State of Iowa to the Dubuque and Pacific Railroad Company, and conveyances from said company to the Dubuque and Sioux City Railroad Company.

Three questions are raised by the records in these cases.

First. Did the act of Congress, passed August 8th, 1846, grant the lands in dispute to the State (then Territory) of Iowa for the purposes specified in the act?

Second. Did the act of Congress of May 15th, 1856, grant the lands in dispute to the State of Iowa for the purposes specified in said act, and did the act vest the title to said lands in dispute in the State of Iowa; or were the lands in dispute reserved to the United States, so that said act of May 15th, 1856, did not operate to vest them in the State of Iowa?

Third. Did the joint resolution of Congress, passed March 2nd, 1861, or the act of July 12th, 1862, pass the title to the lands in dispute to the State of Iowa and through said State to the Des Moines Navigation and Railroad Company?

937 The first question was brought directly before this court in the case of The Dubuque and Pacific Railroad Company vs. Litchfield, and is reported in 23 Howard, 66.

The court in an elaborate opinion, held that the act of August 8th, 1846, did not grant to the State of Iowa any lands above the mouth of Raccoon Fork, and that the Des Moines Navigation and Railroad Company, under whom Litchfield claimed title, had no title to the lands in dispute. That decision must be a finality as far as the construction of that act is concerned. Yet the said Des Moines Navigation and Railroad Company, have been making continued attempts to overturn that decision. The defendant, Litchfield was the president of that company. about the time of that decision. (See record, pag' 5, in the Samuel G. Walcott case now on hearing.) The judgment entered in the circuit court of Iowa upon the mandate of this court was set aside, and it required the perem'tory mandamus of this court to have the judgment stand as the judgment of said circuit court. (Dubuque and Pacific Railroad Company, ex parte, 1 Wallace, 69.) A suit was then brought

938 in circuit court of Iowa, by Calvin Burr, against said Des Moines Navigation and Railroad Company, involving the title to a portion of the same lands as in the present suit, and the case submitted upon an agreed statement of the evidence. This case is recorded in 1st Wallace, 99. The Dubuque and Sioux City Railroad Company intervened in that case in this court, and the case was dismissed.

It is clearly for the interest of the plaintiffs below in these cases to have the defendant obtain judgment on the question of title, for then they would hold their lands under their deeds. It is also to the int'rest of the defendent below to succeed, for if it can now succeed in procuring from this court an opinion that the title to the lands in dispute is valid, it will give it some one hundred thousand acres of land now held by the Dubuque and Sioux City Railroad Company.

This very readily accounts for the reason that the defendant in the court below should voluntar'ly go to the State of New York and enter *to* an appe'rance to suits there, where it might be out of the way of the interferance of the Dubuque and Sioux City Railroad Company.

939 The records in these cases show that there is no real contest between these parties to the suit, but that the real litigant against both parties is the Dubuque and Sioux City Railroad Company.

The other railroad companies interested in the lands granted in the act of May, 1856, which cross the Des Moines above the Raccoon Fork are also interested in the questions involved.

The second question can only be answered in the affirmative. The fact itself vested the title to the lands therein described in the State of Iowa. It' language is: "That there be, and is hereby, granted to the State of Iowa, for the purpose," &c. This is a present grant. The particular lands granted are made certain by the location of the line of the road, and all the estate of the United States passed by the act itself to the State of Iowa. We refer to a few of the authorities on this point, as it seems so well settled as to be beyond dispute. (United States vs. Brocks, 10 Howard, 442; Lassieur vs. Price, 12 Howard, 59; Dubuque and Pacific Railroad Company vs. Litchfield, 23 Howard, 66.)

In this last case, the court, speaking of the act of August 8, 1846, where the granting clause is the same language as the act of May
940 15, 1856, used the following language: "The act of Congress was a direct grant to Iowa, in fee, of the undivided moiety of the whole tract on each side of the river from the Raccoon Fork to the Missouri line. Congress had the undoubted power to make the grant and vest the fee." The record in the case of S. G. Walcott, page 46, showes that said road was located on the 27th day of September, 1856, and the lands in dispute lie within the six-mile limit of the line of said road and the alternate odd-numbered sections. On the 14th day of July, 1856, the general assembly of Iowa passed an act granting all the lands included in the act of May 15, 1856, to aid in the construction of the railroad from Dubuque to a point on the Missouri River, at or near Sioux City, to the Dubuque and Pacific Railroad Company. The granting part is in the following language: "Are hereby disposed of, granted, and confer'ed to and upon the Dubuque and Pacific Railroad Company," &c. This is a grant in presenti, and vested the title to the lands in said company. Upon the location of the line of said road, the title in the particular lands vested, and the United States had no remaining interest in them. On the 9th day of July, 1857, said company conveyed the lands in dispute, by deed of trust, to certain parties to secure
941 bonds to be issued for the construction of the road, and on the day of November, 1863, said Dubuque and Sioux City Railroad Company (which had become vested with the right and title of the Dubuque and Pacific Railroad Company in said lands) conveyed the same to George J. F'rrest and others.

It is now claimed that the last proviso to the first section of the act of May 15, 1856, excepted the lands claimed by the Des Moine' Navigation and Railroad Company from the operation of this grant. That proviso is as follows: "And provided further, that any and all lands heretofore reserved to the United States by any act of Congress, or in any other man'er by competent authority, for the purpose of aiding in any objects of internal improvements, or for any other purpose whatsoever, be, and the same are hereby, reserved from the operation of this act," &c. It is not claimed that any act of Congress had reserved the lands in dispute to the United States, unless the decision in the case of The Dubuque and Pacific Railroad Company vs. Litchfield, 23 Howard, is erroneous and is to be overruled. But it is claimed that these lands were reserved to the United States by certain executive officers of the Government, and that the joint resolution of March 2d, 1861, and the act of Congress of July 12th, 1862, vested these lands in the State
942 of Iowa, and through it in said Des Moines Navigation and Railroad Company. The above proviso requires that the reservation

be to some legal purpose and by competent authority. The only purpose claimed for such reservation was to aid in the improvement of the Des Moines River. But this court held in the above case, in 23 Howard, that the lands in dispute were not reserved, and that no right in or to them passed by the act of August 8th, 1846. No reservation had been made by competent authority. The evidence set out in the record shows that, prior to the act of May 15th, 1856, the proper executive officers of the Land Department of the United States had construed the act of August 8th, 1846, as a grant extending above the mouth of the Raccoon Fork, and as including the lands in dispute; that the lands in dispute had been selected as within said grant, and that such selections had been approved by the proper executive officers of the United States. If these officers had the authority to make a reservation within the aforesaid proviso, and did make such reservation, then the Dubuque and Sioux City Railroad Company has never had any title to the said lands.

The absolute power over, and the right of disposition of, the
943 public lands of the United States is in Congress; no such right existes in any of the officers of the Government, unless specially confer'ed for same particular purpose by act of Congress. The only authority confer'ed by act of Congress is the act of August 8th, 1846, and this court has held that no right of reservation was confer'ed upon such officers by that act. In the case of 23 Howard, above quoted, the court says: "No authority was confer'ed upon the executive officers administ'ring the public lands to do more than make partitions between the tenants in common, Iowa and the United States, in the manner prescribed by Congress. The premises in dispute lie sixty miles beyond the limits of the trust granted. It was therefore impossible to make partition under this grant, of lands lying outside of its bound'ries, and all attempts to do so were merely nugatory." These officers never claimed or professed to reserve these lands to the United States by any right in themselves to do so, but only for the purpose of carrying into effect the act of August 8th, 1846. These officers have power to offer for sale, and to suspend from sale, the public lands of the United States as prescribed by law, but no authority is confer'ed upon them to reserve the public lands for any particular uses. On the 1st of June, 1849,
944 the officers of the land office at Iowa City were directed to withhold from sale the lands in dispute. (See record in the Walcott case, page 12.) These executive officers withheld these lands from sale, not as a reservation, but temporarily, till the construction of the act could be judicially decided. (See same record, pages 14 and 15, 26 & 27.) On the 10th day of May, 1856, just before the act of May 15, 1856, was passed, all the land offices in Iowa were directed to suspend from sale all the lands in the several land districts. If a simple withholding of lands from sale or suspension of lands from sale by the executive officers is a reservation to the use of the United States for a particular purpose, then the State of Iowa acquired no title to any lands in Iowa or it acquired the title to all the lands in said land-office districts, for all the lands were reserved from sale. We, therefore, insist that no reservation of the lands in dispute had been made by competent authority, and that the title to the lands vested in the State, and that no act of the executive officers, or even of Congress, could divest the State of Iowa of such title, after the *exceptance* of the grant by the State.

Third. We further claim that, under the last question, no title to the lands in dispute passed to the State of Iowa, under the joint resolution

of 1861, or the act of Congress of July 12th, 1862, for the reason that the United States had no title to grant.

945 It had already divested itself of the title by the act of May 15, 1856. No title could pass from the State of Iowa, under the act of July, 1862, for the reason that a grant by a State is not a warrantee, and a subsequently-acquired title does not inure to a grantee from a sovereign power. "Grants made by a legislature are not warrantees, and the rule universally applied in determining their effect is, that if the thing granted was not in the grantor at the time of the grant no estate passed to the grantee." (Brice vs. Railroad Company; 1 Black, 374.)

All the questions involved in these cases seem to have been fully settled by the prior adjudication of this court, and we trust that the decision in these cases will end litigation in regard to the title to these lands.

PLATT SMITH,
For Intervenors.

I, D. W. Middleton, clerk of the Supreme Court of the United States, do hereby certify that the foregoing manuscript pages, numbered from (1) one to (9,) nine, inclusive, contain a true copy of the brief of Platt Smitt, counsel for the intervenors, filed in the said Supreme Court, in the case of Samuel G. Wolcott vs. The Des Moines Navigation and

946 Railroad Company, No. 204, of December term, 1866, as the same remains upon files of the said Supreme Court.

In testimony whereof I hereunto subscribe my name affix the seal of the said Supreme Court, at the city of Washington, this 8th day of September, A. D. 1870.

[SEAL SUP. C'T U. S.] D. W. MIDDLETON,
Clerk Supreme Court U. S.

[5-c. rev. stamp, cancelled.]

(Endorsed:) Filed May 9, 1871. George B. Corkhill, clerk.

947

948 CII.—*The argument of L. Trumbull and B. C. Cook in behalf of The Mississippi and Missouri Railroad Company, in Wolcott, plaintiff in error, v. The Des Moines Navigation and Railroad Company.*

Be it remembered that, upon the trial of the aforesaid issue, joined between the said parties, the counsel for the defendants, to maintain and prove the said issue on their part, produced and read the following documents:

United States Supreme Court. December term, 1866.

SAMUEL G. WOLCOTT
vs.
DES MOINES NAVIGATION AND RAILROAD CO. } No. 204.

Argument in behalf of The Mississippi and Missouri Railroad Company, who have been permitted to intervene in this case.

The main question to be decided in this case is whether the lands in controversy were granted by the act of May 15, 1856, making a

949 grant of lands to the State of Iowa in alternate sections to aid in the construction of certain railroads in said State. (11 Statutes, 9.)

The first section of the act is as follows:

"That there be, and is hereby, granted to the State of Iowa, for the purpose of aiding in the construction of railroads from Burlington, on the Mississippi River, to a point on the Missouri River, near the mouth of the Platte River; from the city of Davenport, via Iowa City and Fort Des Moines, to Council Bluffs; from Lyon City, northwesterly, to a point of intersection with the main line of the Iowa Central Air-line Railroad, near Maquoketa; thence on said main line, running as near as practicable to the forty-second parallel, across the said State, to the Missouri River; from the city of Dubuque to a point on the Missouri River, near Sioux City, with a branch from the mouth of the Tete Des Morts, to the nearest point on said road, to be completed as soon as the main road is completed to that point, every alternate section of land, designated by odd numbers, for six sections in width, on each side of each of said roads. But in case that it shall appear that the United States have, when the lines or rout's of said roads are definitely fixed, sold any section
950 or any parts thereof granted as aforesaid, or that the right of pre-emption has attached to the same, then it shall be lawful for any agent or agents to be appointed by the governor of said State, to select, subject to the approval of the Secretary of the Interior, from the lands of the United States nearest to the tiers of sections above specified, so much land, in alternate sections or parts of sections, as shall be equal to such lands as the United States have sold or otherwise appropriated, or to which the rights of pre-emption have attached as aforesaid, which lands (thus selected in lieu of those sold, and to which pre-emption rights have attached as aforesaid, together with the sections and parts of sections designated by odd numbers as aforesaid, and appropriated as aforesaid,) shall be held by the State of Iowa for the use and purpose aforesaid: *Provided*, That the lands to be so located shall in no case be further than fifteen miles from lines of said roads, and selected for and on account of each of said roads: *Provided further*, That the lands hereby granted for and on account of said roads severally, shall be exclusively applied in the construction of that road, for and on account of which such lands are hereby granted, and shall be disposed of only as the work progresses, and the same
951 shall be applied to no other purpose whatsoever: *And provided further*, That any and all lands heretofore reserved to the United States by any act of Congress, or in any other man'er by competent authority, for the purpose of aiding in any object of internal improvement, or for any other purpose whatsoever, be, and the same are hereby, reserved to the United States from the operations of this act, except so far as it may be found necessary to locate the rout's of said railroads through such reserved lands; in which case the right of way only shall be granted, subject to the approval of the President of the United States."

Section 3d declares that "the lands hereby granted to the State shall be subject to the disposal of the legislature thereof, for the purposes aforesaid, and no others."

Section 4th declares the man'er in which the lands granted shall be disposed of by the State; "and if any of said roads are not completed within ten years no further sale shall be made, and the lands unsold shall revert to the United States."

The lands in dispute lie within the six-mile limit of one of the roads specified in the act of Congress, and are embraced within it, unless the

United States, before the lines of the road were definitely fixed,
952 had "sold" the same, or the "right of pre-emption" had attached thereto, or they had been reserved to the United States by act of Congress, or in some other man'er by competent authority.

It is not pretended that the United States have ever sold the lands in controversy, or that any right of pre-emption has attached thereto. Had they, at the date of the act, May 15, 1856, been reserved to the United States by any act of Congress, or in any man'er by competent authority for any purpose whatever? The record does not contain the slightest evidence of any such reservation, except the order of the Commissioner of the General Land Office of May 10, 1856, the object of which was to protect from sale the lands granted by the act of May 15, 1856, the bill for which having passed both Houses, was then awaiting the signature of the President; and if this reservation of all the lands in the several land districts through which any of the contemplated roads might pass, made for the purpose of protecting the lands for the benefit of the grant is be construed as taking the out of its operation, the act would be nugatory; no court could give a construction to an act done in aid of a grant which would destroy it. So far from the
953 lands in question having been reserved, so as to take them out of the operation of the act of May 15, 1856, the record showes that, prior to that time, they had been certified to the State of Iowa as embraced in the grant of lands of August 8th, 1846, to aid in the improvement of the navigation of Des Moines River, and that the State or its grantees were, at that time, in possession, claiming and exercising acts of ownership over the lands in question. (Record, 26.)

The authorities of Iowa, the officers of the Des Moines Navigation Railroad Company, and of the Interior Department, at the date of the act of May 15, 1856, all supposed the lands in controversy had been granted to the State of Iowa by the act of August 8, 1846. Nobody, at that time, supposed them reserved to the United States for any purpose. It subsequently turned out, (Dubuque and Pacific Railroad Company vs. Litchfied, 23 Howard,) that these lands were not embraced in the act of August 8, 1846, and now an attempt is made to construe the mistaken action of the Land Department in certifying these lands, as embraced in the grant of August 8, 1846, into a reservation of the lands to the United States. To give such an effect to the action would be
954 contrary to the understanding of everybody at that time. If these lands were reserved or appropriated for any purpose, at the date of the act of May 15, 1856, for what purpose was it? The record fails to show any such reservation to the United States for any purpose. The lands in question, at that time, either belonged to the United States or to the State of Iowa, under the grant of August 8, 1846. This court has decided they did not pass under that act, consequently they were subject to the act of May 15, 1856, and passed by it to the State of Iowa, and, having been once granted, that they were not subject to be again granted or effected by the joint resolution of March 2d, 1861, or the act of July 12th, 1862, is a proposition too plain to admit of argument.

It is insisted that the lands in controversy were not granted to the State of Iowa by the act of May 15, 1856.

The act contains words of present grant in the 3d section—makes the lands granted subject to the disposal of the legislature—and, in the 4th section, declairs that, in a certain event, at the end of ten years, "the lands unsold shall revert to the United States." How could lands
955 revert to a grantor who had never *de*parted with them? The terms of the act are too positive, and the decisions of this court

upon similar grants too frequent and too decisive to question that the title to the lands embraced within the limits passed by the act, and the definite fixing of the lines of the roads, and the acceptance of the lands by Iowa, all of which the record shows to have been done, gave precision to the title, and attached to it the lands granted.

The Commissioner of the General Land Office, in his instructions to land officers, dated June 19th, 1856, says, "When the lines or rout's of said roads are definitely fixed, then, and not till then, will the right of the State attach under the said act to all vacant lands in the odd-numbered sections within the six-mile limit." And the Secretary of the Interior, in his instructions to the Commissioner of the General Land Office, dated April 10, 1862, says, "It follows, then, that such of those lands as are embraced in the act making the railroad grant, approved May 15th, 1856, are to be disposed of according to the terms of that act, and that without any regard to the fact of their having been certified under the act of August 8, 1846." (Printed record, 39.)

956 It is contended that the act of May 15, 1856, did not confer upon the State of Iowa any title to, or any beneficial interest in, any lands; that it simply confer'ed a mere naked power or trust for the benefit of the grantor, which was liable to be revoked at any time prior to the actual construction of the road, and which Congress did revoke by the joint resolution of 2d March, 1861, and the act of 12th July, 1862; and the case of Rice vs. R. R. Co., (1 Black. Rep., 358, 378,) is cited, as sustaining this proposition. The case cited fails to sustain this position. The grant of land to Minnesota, which was construed in that case, differed from the one under consideration in an important particular. By the 4th section of that act, it was expressly provided that no title shall vest in said Territory of Minnesota, nor shall any patent issue for any part of the lands mentioned until a continuous length of 20 miles shall be completed through said lands, and the decision of the court upon this point turns upon the force of this provision. The act of May 15, 1856, instead of fixing the time when the title to the granted lands shall vest in the State of Iowa, after the completion of twenty miles of said

957 road, expressly provides that the State may sell the lands on each side of the R. R. as fast as twenty miles of said road shall be completed; and at the expiration of ten years the lands unsold shall revert to the United States. If the point made be a good one, the title of the lands would never have been divested from the United States. The act construed in the case cited, and the act of May 15, 1856, are so different in their provisions, as to lead to the certain conclusion that the intention of Congress in passing the act was to give it a different effect from that which had been given by this court to the former act. The provision in the fo'rth section of the act of May 15, 1856, that, in a certain contingency, "the lands unsold" at the expiration of ten years "shall revert to the United States," is a direct recognition that, during the ten years the United States gave up its control of the lands, and consequently, during that period, could not otherwise dispose of them by any subsequent act or joint resolution.

As to the second point made by Mr. Litchfield, we say: The record doesn't show, as alleged by defendant's counsel, that other lands were selected by agents of the State of Iowa in lieu of those in controversy.

958 The act of May 15, 1856, gave no authority to appoint agents to make such selections in case of lands appropriated only when the United States had "sold any sections or parts thereof granted as

aforesaid," or when "the right of pre-emption had attached to the same," and the Commissioner of the General Land Office, in his certificate, (Record, 52; printed Record, 40,) says these selections were in lieu of land "which the United States had legally sold, or to which the right of pre-emption had legally attached prior to the period at which the rights of the State inured under said grant." It is not pretended that the United States ever "sold," or that "the rights of pre-emption ever attached" to the lands in controversy. Hence no other lands could be selected in lieu of them, or if there were the act would be nugatory and the State would acquire no title by the selection, and, consequently, would not be estopped by such an idle proceeding from claiming the lands granted by the act of May 15, 1856. If Congress granted to the State of Iowa, by the act of May 15, 1856, either a present title to these lands, or an inchoate interest, which did afterwards, by the location of the railroad, ripen into a title, then these lands are not affected by the subse-
959 quent legislation of 1861 and 1862. That the act of May 15, 1856, did convey to the State of Iowa an interest in said lands, which might ripen into a perfect title for the purposes indicated in the act, it seem' impos'ible to deny. If this is so, what title passed by the resolution of 1861 and the act of 1862? Only the title retained by the Government at the time of the passage thereof. Even if Congress had the right to revoke the grant made to the State by the of May 15, 1856, before it was executed, yet, after the expiration of 5 or 6 years from the location of the railroad, and long after the State had granted the same land to the railroad, no such revocation could be made. It was certainly not attempted to be made by the resolution of 1861, for that only purported to convey the title yet retained by the United States. The location of the road was perfected on the 30th Sept., 1856. (Record, p. 48 to p. 44.) The act of Congress and the location of the road, which was a designation of the lands granted, did vest the title to the land in the State of Iowa, and no implied revocation in 1861 or 1862 could affect that title. To hold otherwise would be to say that the roads which were built upon the faith of that grant might lose their right to
960 the lands by act of Congress, after the roads had been built and the expenditure necessary for that purpose had been made.

It is clear, as we believe, that the United States were the owners of these lands in May, 1856, and that the same were granted to the State of Iowa by the act of that date, and that such interest had vested in the different railroads prior to 1861, as could not be divested by the resolution of 1861 or the act of 1862.

The Mississippi and Missouri Railroad Company is largely interested in this question. The title of said company to each alternate section of land through a strip six sections in width on each side of said road and ten miles in length will be affected by the decision. This suit is one brought by a stockholder of the Des Moines Navigation Co. against the company itself. The issue seems to have been joined by consent in the State of New York, and in the case the plaintiff says it is indifferent to him how the decision is made. We think it is fair to infer that this suit has been brought by parties who agree in interest and purpose to unsettle the title to the very large amount of lands which has been applied to aid in the construction of the various railroads in Iowa. We are
961 left in utter ignorance of the pendancy of the suit until it is submitted on briefs to this court.

During the few days given to investigate the question arising in the record amid the pressure of other duties we have been unable to de-

vote that attention to it which its importance demands, and we trust that the court will not limit its investigations merely to the points we have been able to sug'est in defence of the interest we represent.

L. TRUMBULL,
B. C. COOK,
Counsel for M. & M. R. R. Co.

I, D. W. Middleton, clerk of the Supreme Court of the United States, do hereby certify that the foregoing manuscript pages, numbering from (1) one to (12,) twelve, inclusive, contain a true copy of the brief of L. Trumbull and B. C. Cook, counsel for the intervenors, filed in the said Supreme Court in the case of S'muel G. Wolcott vs. The Des Moines Navigation and Railroad Company, No. 204, of December term, 1866, as the same remain upon the files of the said Supreme Court.

In testimony whereof I hereunto subscribe my name & affix the seal of the said Supreme Court, at the city of Washington, this 8th day of Sept., A. D. 1870.

D. W. MIDDLETON,
Clerk of Supreme Court U. S.

(Endorsed:) Filed May 9, 1871. George B. Corkhill, clerk.

962 CIII. *Supplemental act of the general assembly of the State of Iowa, March 12th, 1866.*

An act supplemental to chapter 108 of the laws of the tenth general assembly.

SECTION 1. *Be it enacted by the general assembly of the State of Iowa:* That all moneys received by the register of the State land office, as provided by section 13 of chapter 108 of the laws of the 10th general assembly, shall be paid over to the State treasurer, who shall pay out the same, as follows: 1st. The expenses of such classification, appraisement, advertisement, and sales; 2d. Sums due the State for moneys advanced or due other parties as mentioned in section 9 of the act to which this act is supplemental; 3d. He shall pay the warrants provided for in section 2 of this act pro rata, as such moneys shall be received.

SEC. 2. That there is hereby appropriated out of the money thus to be paid into the State treasury the sum of one hundred and seventy thousand dollars, or so much thereof as may be necessary for the payment of the claims of the following persons, or their assignees: $170,000 00 appropriated.

963 James J. Kinnersly, Jonas Houghton, Adam Hine, W'm Baker, R. Jackson for heirs of A. Miller, W'm Armstrong, Edwin Manning, John Parker, H. D. Stewart, Van Buren County; Meek & Bros., Joseph Benning, George Grey, D. Kennedy, S. Dwight Eaton, Peter Tobie, Thomas H. Harlan, Guy Wells, J. P. Gray, Robert P. Gray, Felix Deck, John Stafford, J. Benning, administrator; W'm McCowan, Isaac P. Gray, Gray & Co., Wells, Chedester & Co., Green, Bragg & Co., E. T. Colton, Meek & Sons, O. H. P. Scott, H. K. Love & Co.; and the a'ditor of state is hereby required to draw warrants therefor upon the written application of James J. Kinnersly, and other parties mentioned

To whom.

Auditor to draw warrant therefor.

in this section, or their assignees, which warrants shall be payable out of the moneys mentioned in section 1 of this act, and shall draw interest at the rate of seven per cent. per annum, provided such warrants shall not construed as rendering the State liable to pay the said warrants, except out of the aforesaid fund.

From what fund paid; to draw interest at 7 per cent.

State not liable.

964 SEC. 3. The written application for said warrants shall specify the amount of warrants that shall be issued in the name of each of said parties, or their assignees, the correctness of which shall be evidenced by the certificate of the register of the State land office.

Application for warrants, how made.

SEC. 4. The warrants issued under the provisions of this act shall be receivable in payment for lands sold under the provisions of the act to which this act is supplemental.

Warrants receivable for certain lands.

SEC. 5. The Des Moines Valley Railroad Company may at any time pay any of the warrants mentioned in this act, upon the like condition that they are authorized by the act to which this is supplemental, to pay off the claims therein mentioned; and if the said company shall be unadvised of the whereabouts of such warrants they may pay the funds for the redemption thereof into the State treasury, from which time interest shall cease to accrue on such warrants:

D. M. R. R. Co. may pay warrants—conditions.

965 Provided, however, that no part of the lands mentioned in this act, or in the act to which this is supplemental shall be conveyed to said railroad company until all of said warrants shall have been paid.

No lands conveyed, until warrants are paid.

SEC. 6. When the funds for the redemption of said warrants shall be received by the state treasurer, he shall give notice thereof in the manner now required to be given for the redemption of outstanding warrants.

Treasurer to redeem said warrants: how.

SEC. 7. That, after the lands mentioned in section 4 of the act to which this act is supplemental, shall have been offered for sale, under the provisions of said act, for the space of three months, and remain unsold, it shall be competent for the register of the State land office, with the advice and approval of the census board, to sell such lands at a less price per acre, if by said board deemed advisable, provided the said lands should not be sold at a price less than $1 25 per acre, and provided said register shall first give thirty days' notice by publication in the State Register, and the Iowa Northwest of the time of said sale, at such reduced price.

Register may sell at less price; when.

Shall not sell for less than $1 25 per acre.

Register give notice of sale.

966

SEC. 8. All persons who may, at the date of the passage of this act, be in actual occupation and possession of any portion of said lands, shall have prior right to purchase the same at $2 50 per acre, not exceeding 160 acres to any one settler.

Prior right to buy.

SEC. 9. This act, being deemed of immediate importance by the general assembly, shall take effect, and be in force from and after its publication in the Iowa State Register and Iowa Homestead, newspapers published at Des Moines, Iowa.

Publications.

Approved March 12th, 1866.

I hereby certify the foregoing act was published in the Iowa State Register, March , 1866, and in the Iowa Homestead, March 21, 1866.

JAMES WRIGHT,
Secretary of State.

967 CIV. *The decision of the Supreme Court of the United States in Walcott v. The Des Moines Company.*

(Printed in the 5th volume Wallace Reports at p. 681.)

CV. *Secretary Browning to the Commissioner of the General Land Office, Dec. 31st, 1868.*

DEPARTMENT OF THE INTERIOR,
Washington, D. C., Dec. 31, 1868.

SIR: I return the papers which accompanied your letter of the 25th May last, in the case of Elisha Spicklemier, claiming under the pre-emption law the N.W. q'r sec. 15, t'p 84, range 27, Des Moines, Iowa.

This tract is situated "above the mouth of the Raccoon Fork, in the State of Iowa," and prior to the passage of the joint resolution of March 2d, 1861, had "been certified to said State improperly by the Department of the Interior, as a part of the grant by act of Congress, approved August 8, 1843, and was then held by bona-fide purchasers under the State of Iowa," and the title of the United States, was by said resolution, relinquished to said State.

Your decision in favor of Spicklemier is therefore reversed.

Very respectfully, your obedient servant,

O. H. BROWNING,
Secretary.

COMMISSIONER OF THE GENERAL LAND OFFICE.

CVI. *Secretary Browning to the Commissioner of the General Land Office. December 31st, 1868.*

DEPARTMENT OF THE INTERIOR,
Washington, D. C., December 31, 1868.

SIR: I have received your letter of the 12th June last, submitting the papers in the case of David C. Martz, involving the right to the W. h'f N. E. q'r, 17, 80, 24, Des Moines, Iowa.

This tract is situated "above the mouth of the Raccoon Fork" "in the State of Iowa," and, prior to the passage of the joint resolution of March 2d, 1861, had "been certified to said State improperly by the Department of the Interior, as a part of the grant by act of Congress, approved August 8th, 1846," and was "then held by bona-fide purchasers under the State of Iowa," and the title of the United States was by said resolution, relinquished to said State.

Your decision, adverse to Martz, is affirmed and the papers are herewith returned.

Very respectfully, your obedient servant,

O. H. BROWNING,
Secretary.

Hon. JOS. S. WILSON,
Commissioner of the General Land Office.

968 XCVII. *Act general assembly of the State of Iowa granting lands to the Des Moines Valley Railroad Company, March 31st, 1868.*

CHAPTER 57.—DES MOINES VALLEY RAILROAD LANDS.

March 31. An act prescribing the terms and conditions on which the State will relinquish and convey to the Des Moines Valley Railroad Company certain rights and privileges in respect to the resumption of lands heretofore granted to said company.

Preamble. Whereas by act of Congress, approved August 8, 1846, there was granted to the then Territory of Iowa certain lands to aid in the improvement of the Des Moines River, in

1847, J. R. 2. said Territory, which grant the State of Iowa, by joint resolution of the general assembly, approved January 9, 1847, accepted for the purposes therein specified; and,

1858, ch. 99. Whereas the general assembly of this State, by an act approved March 22, 1858, granted such portion of said lands as had not been previously disposed of, to the Keokuk, Fort Des Moines and Minnesota Railroad Company, to aid in the construction of a railroad from the city of Keokuk up and along the valley of the Des Moines River by the way of the city of Des Moines to the northern line of the State, in the direction of the southern bend of the Minnesota or St. Peter's River, and providing that said grant should become operative when the consent of Congress to the diversion of said lands should be obtained, or the title thereto vested in the State; and also imposing upon said company, in case of its acceptance of said grant, certain conditions and restrictions, among which it was provided that said company would complete seventy-five miles of said road within three years, and thirty-three miles each year thereafter for five years, and the whole line on or before the first day of December, 1868; and,

Whereas such consent of Congress to the diversion was given by an act, approved July 12, 1862, and said company afterwards accepted said grant; and,

Whereas said Keokuk, Fort Des Moines and Minnesota Railroad Company is now known as and called the Des Moines Valley Railroad Company; and,

Whereas said railroad [company] is in default in respect to the time of construction of said road, and in the performance of other conditions of said grant, whereby the State has the right to resume the whole or a part of said lands; therefore,

SECTION 1. *Be it enacted by the general assembly of the State of Iowa*, That the reserved rights and interests of the

Relinquishment to D. V. R. R. Company. State in respect to the resumption and disposal said lands are hereby relinquished to and conferred upon the said Des Moines Valley Railroad Company, in the manner and upon the performance of the conditions precedent by said company as hereinafter set forth, and not otherwise, viz:

Duty of register State land office. First. That it shall be the duty of the register of the State land office, as soon as practicable, and before the first day of July, 1868, to set apart and reserve from the re-

maining river lands within the grant, and lying in place next north of township number ninety, and upon which there are no settlers claiming homestead rights, and exclusive, also, of the ten sections set apart and sold to S. H. Taft, one hundred thousand acres of said lands, which shall be especially held to secure the payment of the claims described in sections 1 and 2 of chapter 22 of the Laws of the Eleventh General Assembly of Iowa, and also of such claims as have been or may be allowed by the present general assembly. 100,000 acres to pay claims.

Second. That if the said Des Moines Valley Railroad Company shall fail to pay in full and discharge all the claims in the preceding paragraph mentioned, by or before the first day of July next, then it shall be the duty of the register of the State land office, and he is hereby required, to proceed immediately to sell, at his office in Des Moines, for cash, to the highest bidder, for not less than one dollar and fifty cents per acre, all the lands reserved by the preceding paragraph or so much thereof as shall produce the amount of money remaining due and unpaid on such claim: *Provided*, That he shall first advertise the sale of such lands for not less than sixty days, in four different newspapers published, one in Springvale, one in Fort Dodge, one in Des Moines, and one in Keokuk, Iowa: *And provided further*, that such lands shall be sold by him in quantities not less than forty acres nor more than one hundred and sixty acres each, and that the warrants issued by the State auditor on account of the claims aforesaid, shall be received as cash in payment of lands bought at said sale: *And provided further*, that said company shall have the right to pay said claims at any time before such sale of the lands. Sale of lands at not less than $1 50 per acre. Proviso: advertisement. Company may pay claims.

969

Third. That upon such sale and payment of the purchase-money, the register shall issue a certificate to the purchaser, showing the land purchased by him and the amount paid therefor; and upon the presentation thereof to the governor, he shall execute to the purchaser a deed in the name of the State of Iowa, without warranty, conveying the lands so purchased, which deed shall be effectual to pass all the right and title thereto now held by the State, or which may hereafter be acquired by the State from the United States; and all moneys, the proceeds of the sale of lands as aforesaid, shall be by the register paid into the State treasury for the use of the holders of the unpaid claims herein provided for; which shall be paid in the order specified in section 1 of chapter 22, of the Laws of the 11th General Assembly, upon the production and surrender of the warrants therefor; and if there should be an amount insufficient to pay the same in full, then the same shall be paid pro rata; and if there shall remain a balance after paying the same in full, such balance shall be paid over to said railroad company. Register to certify. Gov. to execute deeds. Moneys for lands to be paid claimants; how. 1866, ch. 22. Company to get balance.

Fourth. That the register of the State land office shall, as soon as practicable, and prior to the first day of July next, select from the lands embraced in the said act of Congress, approved July 12, 1862, excluding the lands reserved and described in the first paragraph hereof, one hundred thou-

sand acres of said land of average value as near as practicable, and embracing the ten sections sold to S. H. Taft; and the lands so selected, as well as the proceeds of any portion thereof now sold, shall be held and applied exclusively for the construction of said railroad above Des Moines, as now provided by law, and shall be conveyed and patented to said railroad company, or to such person or persons as they shall direct, only upon the completion of said railroad into the town of Fort Dodge, situated on the east side of the Des Moines River, within the year 1870, which said company agrees to do; and the evidence of such completion shall be the running of trains into said town within the time specified, and none of said lands shall be patented until such completion, and the proceeds of any portion thereof sold under provisions of existing law shall be at the same time paid over to said railroad company. The said railroad company shall also have not less than sixty-five miles of said road from their present terminus graded during the present and the ensuing calendar year.

Register of S.L. O. to sel'ct 100,000 acres for road above D. M. lands, and proceeds to be turned over when the road is completed to F't Dodge, in 1870.

65 miles to be graded in 1868-'69.

Fifth. That so soon as satisfactory evidence shall be furnished to the governor that all the claims herein provided for have been settled and paid, or fully discharged, whether by the sale of the land or by payments made by said railroad company, he shall execute and deliver to the Des Moines Valley Railroad Company, or to their assigns, a deed or deeds, in the name of the State of Iowa, without warranty, for all the lands embraced in the said act of Congress, approved July 12, 1862, save and except the one hundred thousand acres hereinbefore reserved for the construction of said road above the city of Des Moines to Fort Dodge; and except also any lands embraced in said grant which may have been reserved by any act passed prior hereto by the State of Iowa for the protection or benefit of settlers or persons claiming homesteads thereon; and the settlement made and approved June 20th, 1866, by the census board of the State of Iowa with the Des Moines Valley Railroad Company, and the settlement with the United States therein referred to, are hereby ratified and confirmed.

Governor to deed lands to com'ny.

970

Exceptions.

Settlements with D. M. V. R. R. Co. and U. S. ratified.

SEC. 2. In case of non-compliance by said railroad company with the foregoing conditions by it to be performed, then, without further legislation, this act shall have the force and effect of an act of resumption, and all rights of said company in and to said lands or any part thereof, heretofore or hereby granted to said company, and not at the time of such failure actually conveyed by the State to said company, shall be forfeited to and revested in the State of Iowa, as full[y] as if the grant thereof had never been made by the State.

In case of non-compliance, co. to forfeit land grant.

SEC. 3. This act shall be accepted by the said railroad company, and evidenced by the signature of the president and secretary of said company, with the corporate seal thereof, within thirty days from the approval of this act, but the non-acceptance by the said Des Moines Valley Railroad Company of this act shall not prevent all the foregoing provisions thereof from having the same operation and effect as if the same had been accepted by said company.

To be accepted in 30 days.

The company accepting the provisions of this act shall at all times be subject to such rules, regulations, and rates of tariff for transportation of freight and passengers as may, from time to time, be enacted by the general assembly of the State of Iowa. Restrictions on tariffs.

SEC. 4. So much of section three of chapter one hundred and eight, of the Laws of the Tenth General Assembly, and of other laws and provisions relating thereto, including section five of said chapter, as requires the lands hereinbefore referred to, or any part thereof, to be classified or graded by commissioners, and all other acts and parts of acts inconsistent with this act, are hereby repealed. 1864, ch. 108. Law for grading lands by commissioners repealed.

SEC. 5. This act shall be in force and have effect from and after its publication in the State Register and Evening Statesman, papers published in Des Moines, Iowa. Taking effect.

Approved March 31, 1868.

I hereby certify that the foregoing act was published in The Iowa Evening State'man, April 1, 1868, and in the Daily State Register, April 2, 1868.

ED. WRIGHT,
Secretary of State.

971 CVIII. *Table read in evidence from the report of the register of the State Land Office of Iowa, to the governor of said State, dated Nov. 10th, 1869.*

DES MOINES VALLEY RAILROAD LANDS.

List of lands patented by the State of Iowa to the Des Moines Valley Railroad Company, embracing in the aggregate 362,997.68 acres, (patents issued February 23d, 1869.)

Parts of sections.	Sec.	Town.	Range.	Acres.	Remarks.
WEBSTER CO.					
N. E. of S. W	18	90	27		Indemnity.
N. E. of N. W	28	90	27		"
S. W. of S. W	36	90	27	120.00	"
S. E. of N. E	8	87	29		"
N. W. of N. E	14	87	29		"
S. E. of S. W	14	87	29	120.00	"
N. fr. h'f of N. W. q'r	5	90	29	71.13	In place.
S. E. of N. W	2	90	30		Indemnity.
S. W. of S. E	4	90	30	80.00	"
Aggregate in Webster County				391.13	
HUMBOLDT CO.					
N. h'f of N. E	2	91	27		Indemnity.
Lots 1 and 2	3	91	27		"
Lot 4	4	91	27		"
N. E. of S. W	6	91	27		"
N. W. of N. E	10	91	27	310.75	"
Lot 3	17	91	28		In place.
Lot 5	29	91	28		"
W. fr. h'f	31	91	28	322.68	"
N. E. q'r	17	92	28		"
S. E. q'r	17	92	28		"
W. h'f of S. W	17	92	28		In place.
N. W. of N. E	19	92	28		"
S. E. of N. E	19	92	28		"
E. h'f of N. W	19	92	28		"
E. h'f of S. W	19	92	28		"
N. W. q'r, N. h'f of S. W., and S. E. of S. W	21	92	28		"
E. h'f	29	92	28		"
Lots 5 and 6	33	92	28	1,281.42	"

Des Moines Valley Railroad lands—Continued.

Parts of sections.	Sec.	Town.	Range.	Acres.	Remarks.
HUMBOLDT CO.					
N. W. of N. W.	3	91	29		In place.
S. h'f of N. W.	3	91	29		"
S. W. q'r	3	91	29		"
E. fr. h'f.	5	91	29		"
All	9	91	29		"
S. h'f.	15	91	29		"
E. h'f.	17	91	29		"
N. E. of S. E.	18	91	29		Indemnity.
All	21	91	29		In place.
S. W.	27	91	29		"
E. h'f sec., E. h'f of N. W. q'r, and E. h'f of S. W. q'r	29	91	29		"
W. fr. h'f of N. W.	30	91	29		Indemnity.
972 E. h'f of N. E. q'r	31	91	29		In place.
E. h'f of S. E. q'r	31	91	29		"
All	33	91	29		"
N. W. of S. W. & S. h'f of S. W.	35	91	28	4, 228. 69	"
N. W. of N. E.	1	92	29		"
S. h'f of N. E.	1	82	29		"
N. W. fr'nc. q'r	1	92	29		"
S. h'f.	1	92	29		"
All	3	92	29		"
All	5	92	29		"
All	7	92	29		"
N. h'f	9	92	29		"
S. W. q'r	9	92	29		"
N. h'f of S. E.	9	92	29		"
S. W. of S. E.	9	92	29		"
All	11	92	29		"
N. h'f.	13	92	29		"
S. W. q'r	13	92	29		"
W. h'f of S. E.	13	92	29		"
All	15	92	29		"
N. h'f.	17	92	29		"
S. W. q'r.	17	92	29		"
E. h'f of S. E.	17	92	29		"
S. W. of S. E.	17	92	29		"
S. W.	23	92	29		"
N. E.	25	92	29		"
W. frac. h'f, and S. E. q'r.	31	92	29	6, 506. 03	"
W. frac. h'f of N. W.	18	91	30		Indemnity.
W. frac. h'f of S. W.	18	91	30		"
S. E. of S. W.	18	91	30		"
N. E. of N. E.	34	91	30	263. 32	"
N. E. frac. q'r of N. E.	1	92	30		In place.
S. h'f of N. E.	1	92	30		"
N. W. frac. q'r of N. W.	1	92	30		"
S. h'f of N. W.	1	92	30		"
S. h'f.	1	92	30		"
All	3	92	30		"
N. E. frac. q'r of N. E.	5	92	30		"
S. h'f of N. E.	5	92	30		"
N. E. of N. W.	5	92	30		"
S. h'f of N. W.	5	92	30		"
S. E. q'r.	5	92	30		"
S. E. of S. E.	7	92	30		"
Lot 1 and E. h'f.	9	92	30		"
W. h'f of N. E.	11	92	30		"
W. h'f of S. E.	11	92	30		"
S. E. of S. E.	11	92	30		"
E. h'f of S. W.	11	92	30		"
973 N. h'f of N. E.	13	92	30		"
S. W. of N. E.	13	92	30		"
W. h'f of S. E.	13	92	30		"
N. W. q'r	13	92	30		"
Lots 1, 5, and 7	15	92	30		"
Lot 1 and S. W. of S. E.	17	92	30		"
All	19	92	30		"
All	21	92	30		"
Lots 1, 2, 3, 4, 5, and 10	23	92	30		"
S. W. of N. W.	23	92	30		"
All	29	92	30		"
All	35	92	30	5, 764. 11	"
N. W. fr. qr.	1	93	30		"
N. W. of S. W.	1	93	30		"
S. E. of S. W.	1	93	30		"
N. fr. h'f of N. E.	3	93	30		"
N. W. fr. q'r.	3	93	30		"
S. h'f of S. E., and N. E. of S. E.	3	93	30		"
N. h'f of N. W., and N. W. fr. q'r of N. E.	5	93	30		"

Des Moines Valley Railroad lands—Continued.

Parts of sections.	Sec.	Town.	Range.	Acres.	Remarks.
HUMBOLDT CO.					
Lots 1, 2, and 3	7	93	30		In place.
N. W. of N. E	9	93	30		"
S. h'f of N. E	9	93	30		"
W. h'f of S. E	9	93	30		"
E. h'f of N. E	11	93	30		"
S. W. of N. E	11	93	30		"
S. E. q'r	11	93	30		"
E. h'f of N. W	11	93	30		"
S. W. of N. W	11	93	30		"
N. E. of S. W	11	93	30		"
W. h'f of S. W	13	93	30		"
W. h'f of N. E	15	93	30		"
E. h'f of N. W	15	93	30		"
N. W. of N. W	15	93	30		"
S. h'f of S. E	15	93	30		"
E. h'f of S. W	15	93	30		"
S. W. of S. W	15	93	30		"
E. h'f of N. W	17	93	30		"
N. W. of N. W	17	93	30		"
N. h'f of S. E	21	93	30		"
S. E. of S. E	21	93	30		"
N. h'f of S. W	21	93	30		"
S. W. of S. W	21	93	30		"
N. E. of N. E	23	93	30		"
S. W. of N. E	23	93	30		"
N. h'f of S. E	23	93	30		"
S. W. of S. E	23	93	30		"
N. h'f of N. W	23	93	30		"
S. W. of N. W	23	93	30		"
S. h'f of S. W	23	93	30		"
N. W. of S. W	23	93	30		"
N. W. of N. E	25	93	30		"
N. W. q'r	25	93	30		"
S. E. of S. E	25	93	30		"
W. h'f of S. E	25	93	30		"
E. h'f of S. W	25	93	30		"
S. W. of S. W	25	93	30		"
N. h'f of N. E	27	93	30		"
974 S. W. of N. E	27	93	30		"
N. W. q'r	27	93	30		"
N. h'f of S. W	27	93	30		"
S. W. of S. W	27	93	30		"
E. h'f of N. W	31	93	30		"
N. W. fr. q'r of N. W	31	93	30		"
S. E. of N. W	33	93	30		"
W. h'f of N. W	33	93	30		"
W. h'f of N. E	35	93	30		"
N. h'f of N. W	35	93	30		"
S. W. of N. W	35	93	30		"
N. h'f of S. E	35	93	30		"
S. E. of S. E	35	93	30		"
S. E. of S. W	35	93	30		"
W. h'f of S. W	35	93	30	4,415.51	"
N. h'f of S. W	29	93	29		"
S. W. of S. W	29	93	29		"
S. h'f of N. E	31	93	29		"
N. W. of N. E	31	93	29		"
S. h'f of N. E	31	93	29		"
N. W. fr. q'r	31	93	29		"
N. E. of S. W	31	93	29		"
N. W. fr. q'r of S. W	31	93	29	551.03	"
Aggregate in Humboldt Co				23,643.54	
KOSSUTH CO.					
All	1	95	27		Indemnity.
All	2	95	27		"
All	3	95	27		"
S. h'f and N. W. fr. q'r	5	95	27		"
S. fr. h'f	6	95	27		"
All	7	95	27		"
W. h'f	8	95	27		"
N. W. q'r and S. E. q'r	9	95	27		"
N. h'f and S. W. q'r	10	95	27		"
All	12	95	27		"
N. h'f	14	95	27		"
W. h'f	15	95	27		"
All	17	95	27		"
S. h'f	19	95	27		"

Des Moines Valley Railroad lands—Continued.

Parts of sections.	Sec.	Town.	Range.	Acres.	Remarks.
KOSSUTH CO.					
N. h'f	20	95	27	7,220.14	Indemnity.
N. h'f	1	96	27		"
All	2	96	27		"
S. h'f	4	96	27		"
All	5	96	27		"
S. E. q'r and N. W. q'r	6	96	27		"
N. W. fr. q'r	7	96	27		"
S. E	8	96	27		"
N. h'f and S. W. q'r	9	96	27		"
E. h'f and S. W	10	96	27		"
W. h'f and S. E	11	96	27		"
975 S. h'f	12	96	27		"
E. h'f	17	96	27		"
All	19	96	27		"
W. h'f	20	96	27		"
S. h'f	30	96	27		"
W. fr. h'f	31	96	27		"
S. h'f	33	96	27		"
W. h'f	34	96	27	6,863.59	"
S. h'f	2	97	27		"
S. h'f	3	97	27		"
N. h'f of S. E	7	97	27		"
N. W	9	97	27		"
S. E	10	97	27		"
S. h f	11	97	27		"
All	12	97	27		"
S. W	15	97	27		"
W. fr. h'f and S. E. q'r	18	97	27		"
All	19	97	27		"
E. h'f and S. W	20	97	27		"
E. h'f and N. W	21	97	27		"
W. h'f	22	97	27		"
W. h'f	27	97	27		"
All	28	97	27		"
E. h'f and S. W	29	97	27		"
E. h'f	31	97	27		"
S. W	32	97	27		"
E. h'f	33	97	27		"
W. h'f	34	97	27	7,517.54	"
S. h'f and N. W. q'r	24	97	28		"
W. h'f and N. E. q'r	25	97	28		"
N. E. q'r	33	97	28	1,120.00	"
S. h'f	3	96	29		"
S. h'f	5	96	29	640.00	"
All	9	97	29		"
E. h'f and N. W	11	97	29		"
N. W	13	97	29		"
W. h'f	15	97	29		"
W. h'f and N. E	17	97	29		"
All	21	97	29		"
W. h'f and S. E. q'r	25	97	29		"
All	27	97	29		"
E. h'f and S. W	29	97	29		"
All	33	97	29		"
E. h'f and S. W. q'r	35	97	29	5,440.00	"
E. h'f.	7	98	29		"
S. W	17	98	29		"
S. E	20	98	29		"
N. E	21	98	29		"
W. h'f and S. E	23	98	29		"
N. E	25	98	29		"
N. E	29	98	29		"
S. E	30	98	29		"
E. h'f	31	98	29		"
All	32	98	29		"
N. W	35	98	29	2,880.00	"
N. E. fr. q'r and S. W. q'r	1	94	30		"
All	7	94	30		In place.
N. E	9	94	30		Indemnity.
976 N. E	13	94	30		"
S. h'f of S. W	15	94	30		In place.
N. E. of N. E	17	94	30		"
W. h'f of N. W	17	94	30		"
S. E of N. W	17	94	30		"
W. h'f of S. E	17	94	30		"
S. E. of S. E	17	94	30		"
S. W. q'r	17	94	30		"
N. fractional h'f	19	94	30		"
S. W. fractional q'r	19	94	30		"

Des Moines Valley Railroad lands—Continued.

Parts of sections.	Sec.	Town.	Range.	Acres.	Remarks.
KOSSUTH CO.					
N. h'f of S. E, & S. E. of S. E	19	94	30		In place.
W. h'f	21	94	30		"
W. h'f of S. E., and S. E. of S. E	21	94	30		"
S. W. q'r	29	94	30	3,017.44	"
S. W. q'r	8	95	30		Indemnity.
N. h'f	17	95	30		"
N. W. frac. q'r of N. W. q'r	19	95	30		In place.
S. frac. h'f of N. W. frac. q'r	19	95	30		"
E. h'f of S. W. frac. q'r	19	95	30		"
N. W. frac. q'r of S. W. fr. q'r	19	95	30		"
N. h'f and S. E. q'r	22	95	30		Indemnity.
E. h'f	27	95	30		"
E. h'f of N. E. q'r	31	95	30		In place.
N. W. of N. E	31	95	30		"
W. frac. h'f of N. W. fr. q'r	31	95	30		"
S. frac. h'f	31	95	30		"
E. h'f	34	95	30		Indemnity.
E. h'f	35	95	30	2,684.96	"
S. E. q'r	9	98	30		"
All	23	98	30		"
All	27	98	30	1,440.00	"
Aggregate in Kossuth County				38,822.67	
POCAHONTAS CO.					
N. W. frac. of N. E	3	92	31		In place.
N. W. frac. q'r	3	92	31		"
N. h'f of S. W	3	92	31		"
S. h'f of N. E	5	92	31		"
S. h'f of N. W	5	92	31		"
N. h'f of S. E	5	92	31		"
N. W. of S. E	5	92	31		"
N. h'f of S. W	5	92	31		"
S. E. of S. W	5	92	31		"
S. h'f of N. E	7	92	31		"
N. E. of S. E	7	92	31		"
S. E. of S. E	7	92	31		"
N. W. of N. E	9	92	31		"
N. W. q'r	9	92	31		"
977 N. W. of S. E	9	92	31		"
S. h'f of S. E	9	92	31		"
N. h'f of S. W	9	92	31		"
S. E. of S. W	9	92	31		"
S. E. q'r, and S. h'f of S. W	11	92	31		"
E. h'f and N. W. q'r	13	92	31		"
S. E. q'r	15	92	31		"
S. W	15	92	31		"
E. h'f of N. W. and S. W. of N. W	15	92	31		"
N. h'f of N. E	17	92	31		"
N. W. q'r	17	92	31		"
E. h'f of S. E	17	92	31		"
N. W. of S. E	17	92	31		"
E. h'f of S. W	17	92	31		"
N. W. of S. W	17	92	31		"
N. h'f of N. E	21	92	31		"
S. W. of N. E	21	92	31		"
N. W. of S. E	21	92	31		"
S. h'f of N. W	21	92	31		"
S. W. q'r	21	92	31		"
All	23	92	31	4,019.74	"
All	1	93	31		"
Lots 1 and 2	3	93	31		"
N. fr. h'f and S. W. q'r	5	93	31		"
N. E. q'r	7	93	31		"
E. h'f of N. W	7	93	31		"
S. W. q'r & S. W. fr. q'r of N. W	7	93	31		"
N. W. of N. E	9	93	31		"
E. h'f of S. E	9	93	31		"
N. E. of N. W	9	93	31		"
S. W. of N. W	9	93	31		"
N. E. of S. W	9	93	31		"
W. h'f of S. W	9	93	31		"
S. W. of N. W	15	93	31		"
N. W. of N. E	17	93	31		"
S. h'f of N. W	17	93	31		"
N. W. of N. W	17	93	31		"
N. E. of N. E	19	93	31		"
W. fr. h'f of N. W	19	93	31		"
S. E. of S. W	19	93	31		"

Des Moines Valley Railroad lands—Continued.

Parts of sections.	Sec.	Town.	Range.	Acres.	Remarks.
POCAHONTAS CO.					
W. fr. h'f of S. W	19	93	31		In place.
E. h'f of N. E	21	93	31		"
S. W. of N. E	21	93	31		"
S. E. of S. W	27	93	31		"
S. W. of N. E	29	93	31		"
N. E. of N. E	31	93	31		"
S. W. of N. E	31	93	31		"
W. fr. h'f	31	93	31	3,094.98	"
N. E. fr. q'r of N. E. q'r	1	93	32		"
S. W. of N. E	1	93	32		"
S. E. of S. E	1	93	32		"
W. h'f of S. E	1	93	32		"
N. W. fr. q'r & N. h'f of S. W. q'r	1	93	32		"
N. E. q'r of S. E	3	93	32		"
W. h'f of S. E	3	93	32		"
N. E. q'r	11	93	32		"
978 N. h'f of S. E	11	93	32		"
S. h'f of N. W	11	93	32		"
N. E. of N. W	11	93	32		"
S. h'f of S. W	11	93	32		"
N. E. of S. W	11	93	32		"
All	13	93	32		"
E. h'f	18	93	32		Indemnity.
N. E	19	93	32		"
N. W	21	93	32		"
E. h'f	22	93	32		"
S. h'f and N. W. q'r	26	93	32		"
E. h'f and N. W. q'r	27	93	32	3,651.64	"
S. h'f	1	93	34		"
S. W. q'r	3	93	34		"
S. E. q'r	4	93	34		"
All	5	93	34		"
E. h'f	6	93	34		"
E. h'f	7	93	34		"
N. h'f	9	93	34		"
W. h'f	17	93	34		"
E. h'f	18	93	34		"
N. h'f	20	93	34	3,273.65	"
Aggregate in Pocahontas				14,040.01	
PALO ALTO CO.					
N. fr. h'f	1	94	31		In place.
S. E. q'r and E. h'f of S. W	1	94	31		"
W. fr. h'f	3	94	31		"
N. fr. h'f of N. E	3	94	31		"
S. W. of N. E	3	94	31		"
W. h'f of S. E	3	94	31		"
W. h'f of S. W	5	94	31		"
E. h'f of N. E	7	94	31		"
S. W. of N. E	7	94	31		"
E. h'f of S. E	7	94	31		"
N. fr. h'f of N. W	7	94	31		"
S. E. of N. E	9	94	31		"
E. h'f of S. W	9	94	31		"
W. h'f of N. E	11	94	31		"
S. E. of N. E	11	94	31		"
E. h'f of S. E	11	94	31		"
W. h'f of N. W	11	94	31		"
W. h'f of S. W	11	94	31		"
S. E. of S. W	11	94	31		"
E. h'f	13	94	31		"
E. h'f of N. W	13	94	31		"
N. W. of N. W	13	94	31		"
N. E. of S. W	13	94	31		"
S. h'f of N. E	15	94	31		"
N. E. of S. E	15	94	31		"
979 S. W. of S. E	15	94	31		"
N. W. q'r & E. h'f of S. W	15	94	31		"
N. W. q'r and W. h'f of S. W	17	94	31		"
N. E. q'r and E. h'f of N. W	19	94	31		"
N. E. of S. E	19	94	31		"
S. W. of S. E	19	94	31		"
S. W. fr. q'r	19	94	31		"
E. h'f	23	94	31		"
N. W. q'r and W. h'f of S. W	23	94	31		"
W. h'f and N. E. q'r	25	94	31		"
W. h'f of N. E. and S. E. of N. E	27	94	31		"
Lots 1, 2, 3, and W. h'f N. E	29	94	31		"

Des Moines Valley Railroad lands—Continued.

Parts of sections.	Sec.	Town.	Range.	Acres.	Remarks.
PALO ALTO CO.					
N. h'f of N. E.	31	94	31	.....	In place.
S. E. of N. E.	31	94	31	.....	"
N. E. of N. W	31	94	31	.....	"
N. h'f of S. E	31	94	31	.....	"
S. W. of S. E	31	94	31	.....	"
S. W. fr. q'r	31	94	31	.....	"
E. h'f of N. E. and N. W. of N. W	35	94	31	5,376.13	"
N. fr. h'f and S. W. q'r	1	95	31	.....	Indemnity.
S. h'f of N. E. and W. h'f of S. E	3	95	31	.....	In place.
N. W. fr. q'r of N. W	3	95	31	.....	"
S. h'f of N. W. and S. W. q'r	3	95	31	.....	"
All	5	95	31	.....	"
W. h'f of N. E	7	95	31	.....	"
W. h'f of S. E	7	95	31	.....	"
W. fr. h'f	7	95	31	.....	"
N. h'f sec. and N. E. of S. E	9	95	31	.....	"
S. h'f of S. E	9	95	31	.....	"
N. E. of S. W	9	95	31	.....	"
S. W. of S. W	9	95	31	.....	"
All	11	95	31	.....	"
S. h'f and N. W. q'r	13	95	31	.....	"
W. h'f of N. E. and S. E. of N. E	13	95	31	.....	"
N. E. q'r and N. h'f of S. E	15	95	31	.....	"
S. h'f of N. W. and S. W. q'r	15	95	31	.....	"
W. h'f of N. E	17	95	31	.....	"
S. E. q'r and E. h'f of N. W	17	95	31	.....	"
S. W. of N. W	17	95	31	.....	"
E. h'f of S. W	17	95	31	.....	"
S. W. of S. W	17	95	31	.....	"
N. E. of N. W	19	95	31	.....	"
W. fr. h'f of N. W	19	95	31	.....	"
N. W. fr. q'r of S. W	19	95	31	.....	"
N. h'f and S. E. q'r	21	95	31	.....	"
E. h'f of N. E	23	95	31	.....	"
N. W. of N. E	23	95	31	.....	"
E. h'f of S. E	23	95	31	.....	"
S. h'f of N. W	23	95	31	.....	"
S. W. q'r	23	95	31	.....	"
All	25	95	31	.....	"
All	27	95	31	.....	"
S. W. q'r of N. E	31	95	31	.....	"
W. h'f of S. E	31	95	31	.....	"
980 S. fr. h'f of N. W	31	95	31	.....	"
S. W. fr. q'r	31	95	31	.....	"
W. h'f sec., S. E. q'r, and W. h'f of N. E. q'r	35	95	31	8,144.13	"
N. E. q'r	7	96	31	.....	Indemnity.
S. h'f and N. W. q'r	9	96	31	.....	"
E. h'f and S. W. q'r	20	96	31	.....	"
All	21	96	31	.....	"
N. h'f.	31	96	31	.....	In place.
N. W. q'r	32	96	31	.....	Indemnity.
All	33	96	31	2,873.32	S. h'f place, N. h'f.
N. fr. h'f	1	94	32	.....	In place.
S. E. q'r	1	94	32	.....	"
E. h'f of S. W. and N. W. of S. W	1	94	32	.....	"
N. E. fr. q'r of N. E. q'r	3	94	32	.....	"
S. W. of N. E	3	94	32	.....	"
N. E. of S. E	3	94	32	.....	"
S. W. of S. E	3	94	32	.....	"
W. fr. h'f	3	94	32	.....	"
E. h'f sec. and E. h'f of S. W	5	94	32	.....	"
S. W. of S. W	5	94	32	.....	"
All	7	94	32	.....	"
All	9	94	32	.....	"
E. h'f sec., E. h'f of N. W., & E. h'f of S. W	11	94	32	.....	"
N. h'f sec., N. E. of S. E., and S. W. of S. E	13	94	32	.....	"
E. h'f of S. W. and N. W. of S. W	13	94	32	.....	"
E. h'f sec. and N. h'f of S. E	15	94	32	.....	"
N. h'f of S. W. and S. E. of S. W	15	94	32	.....	"
N. E. of N. E. and S. W. of N. E	17	94	32	.....	"
E. h'f of S. E. & W. h'f of N. W	17	94	32	.....	"
S. W. q'r	17	94	32	.....	"
N. E. of N. E. and S. W. of N. E	19	94	32	.....	"
N. W. fr. q'r of N. W. q'r and S. E. of N. W	19	94	32	.....	"
E. h'f sec. & W. h'f of N. W	21	94	32	.....	"
N. h'f of S. W	21	94	32	.....	"
W. h'f of N. E. & S. E. of N. E	23	94	32	.....	"
W. h'f of N. W. & S. E. of N. W	23	94	32	.....	"
E. h'f of S. E. and S. W. of S. E	23	94	32	.....	"

Des Moines Valley Railroad lands—Continued.

Parts of sections.	Sec.	Town.	Range.	Acres.	Remarks.
PALO ALTO CO.					
S. W. q'r	23	94	32		In place.
N. h'f sec., E. h'f of S. E., and N. W. of S. E	25	94	32		"
W. h'f of S. W. & N. E. of S. W	25	94	32		"
N. h'f of S. E., N. h'f sec., and W. h'f of S. W	27	94	32		"
All	29	94	32		Indemnity.
N. h'f of N. E. and S. h'f	35	94	32	7, 903. 54	In place.
S. W. of N. E	1	95	32		"
981 N. W. of S. E. & W. fr. h'f sec	1	95	32		"
E. h'f of S. E. & S. E. of N. E	3	95	32		"
W. fr. h'f of N. E. and N. W. fr. q'r	3	95	32		"
E. fr. h'f of N. W. and N. W. fr. q'r of N. E	5	95	32		"
N. E. of N. E	7	95	32		"
W. h'f of N. E. & S. E. of N. E	9	95	32		"
S. E. q'r and E. h'f of N. E	11	95	32		"
S. E. of N. W	11	95	32		"
S. E. of S. W. and N. W. of S. W	11	95	32		"
E. h'f sec., and S. W. of S. W	13	95	32		"
E. h'f sec., N. W. q'r, and N. E. of S. W	15	95	32		"
W. fr. h'f of S. W. & S. E. of S. W	19	95	32		"
N. E. of S. E	21	95	32		"
S. E. of S. E	23	95	32		"
N. W. of S. E	23	95	32		"
N. E. of S. W	23	95	32		"
W. h'f of S. W	23	95	32		"
N. W. of N. W., S. E. of S. W., and lot 4	25	95	32		"
W h'f of S. W	29	95	32		"
W. fr. h'f	31	95	32		"
E. h'f of N. E	33	95	32		"
S. W. of N. E	33	95	32		"
S. E. of N. W	33	95	32		"
S. h'f	33	95	32		"
E. h'f	35	95	32	4, 027. 91	"
E. h'f, N. h'f of N. W., and S. E. of N. W	3	96	32		"
Lots 1, 2, 3, 4, & 9, and W. fr. h'f of N. W. q'r	5	96	32		"
W. fr. h'f	7	96	32		"
All	9	96	32		"
N. h'f and S. E. q'r	11	96	32		Indemnity.
W. h'f	14	96	32		"
All	15	96	32		In place.
E. h'f sec., E. h'f of N. W., and S. W. q'r	17	96	32		"
E. h'f of S. E. & N. W. of S. E	19	96	32		"
S. W. of N. E. & lots 1, 2, & 3	19	96	32		"
All	21	96	32		"
E. h'f	23	96	32		Indemnity.
N. W. of N. W	23	96	32		"
E. h'f of S. W	23	96	32		"
S. W. of S. W	23	96	32		In place.
S. h'f	25	96	32		Indemnity.
S. h'f	27	96	32		In place.
N. E. of N. E	27	96	32		"
S. W. of N. E	27	96	32		"
S. h'f of N. W	27	96	32		"
S. h'f of N. E	29	96	32		"
N. W. of N. E	29	96	32		"
S. E. q'r, N. W. q'r, and N. h'f of S. W	29	96	32		"
N. E. q'r of N. W	31	96	32		"
E. h'f	33	96	32		"
982 S. E. of N. W	33	96	32		"
N. W. of N. W	33	96	32		"
E. h'f of S. W	33	96	33		"
S. W. of S. W	33	96	32		"
All	35	96	32	7, 517. 99	"
S. h'f	2	97	32		Indemnity.
All	5	97	32		In place.
N. E. q'r and N. E. of S. E	7	97	32		"
S. h'f of S. E. & W. fr. h'f sec	7	97	32		"
S. E. q'r	10	97	32		Indemnity.
S. E. q'r and W. h'f	11	97	32		"
E. h'f	13	97	32		"
W. h'f	14	97	32		"
S. h'f of N. E	17	97	32		In place.
N. W. q'r and S. h'f sec	17	97	32		"
All	19	97	32		"
S. h'f of N. E	21	97	32		"
N. W. of N. E	21	97	32		"
S. h'f of N. W	21	97	32		"
N. W. of N. W	21	97	32		"
S. h'f	21	97	32		"
N. W	25	97	32		Indemnity.
W. h'f	26	97	32		"

Des Moines Valley Railroad lands—Continued.

Parts of sections.	Sec.	Town.	Range.	Acres.	Remarks.
PALO ALTO CO.					
S. W. of N. E.	27	97	32	.....	In place.
W. h'f of S. E.	27	97	32	.....	"
N. W. q'r, W. h'f of S. W., and S. E. of S. W	27	97	32	.....	"
N. E. of N. E	29	97	32	.....	"
W. h'f of N. E	29	97	32	.....	"
N. W. q'r and S. h'f sec	29	97	32	.....	"
N. h'f of N. E	31	97	32	.....	"
S. E. of N. E	31	97	32	.....	"
N. W. of S. E	31	97	32	.....	"
S. E. of S. W	31	97	32	.....	"
W. frac. h'f of S. W	31	97	32	.....	"
N. h'f	33	97	32	.....	"
N. h'f of S. E	33	97	32	.....	"
S. E. of S. E	33	97	32	.....	"
N. h'f of S. W	33	97	32	.....	"
S. W. of S. W	33	97	32	.....	Indemnity.
W. h'f	35	97	32	7,501.95	"
N. h'f sec., S. W. q'r, and W. h'f of S. E	1	94	33	.....	In place.
N. E. q'r, S. h'f of S. E., and S. E. of N. W	3	94	33	.....	"
N. E. of S. W	3	94	33	.....	"
N. W. frac. q'r	7	94	33	.....	Indemnity.
All	9	94	33	.....	"
983 W. h'f and S. E	10	94	33	.....	Indemnity.
E. h'f of N. E	11	94	33	.....	In place.
W. h'f of N. W	11	94	33	.....	"
S. E. q'r	11	94	33	.....	"
S. E. of S. W. and W. h'f of S. W	11	94	33	.....	"
N. h'f of N. E	13	94	33	.....	"
N. h'f of N. W	13	94	33	.....	"
S. E. q'r	13	94	33	.....	"
N. h'f of S W.	13	94	33	.....	"
S. E. of S. W	13	94	33	.....	"
S. h'f and N. W	15	94	33	.....	Indemnity.
N. W	28	94	33	.....	"
W. h'f	32	94	33	3,972.51	"
N. h'f, S. W. q'r, N. h'f of S. E., and S. E. of S. E.	3	95	33	.....	In place.
W. h'f and N. fr. h'f of N. E	5	95	33	.....	"
S. W. of N. E. and N. h'f of S. E	5	95	33	.....	"
All	7	95	33	.....	"
E. h'f and E. h'f of S. W	9	95	33	.....	"
W. h'f of S. W	11	95	33	.....	"
E. h'f of S. E. and N. W. of S. E	13	95	33	.....	"
N. h'f and E. h'f of S. E	15	95	33	.....	"
S. W. of S. E. and E. h'f of S. W	15	95	33	.....	"
S. h'f, N. W. q'r, & E. h'f of N. E	17	95	33	.....	"
S. W. of N. E	17	95	33	.....	"
E. h'f of N. E	19	95	33	.....	"
E. h'f and N. W. q'r	21	95	33	.....	"
E. h'f of S. W. and N. W. of S. W	21	95	33	.....	"
N. E. q'r	23	95	33	.....	"
S. E. of S. E	23	95	33	.....	"
W. h'f of S. E	23	95	33	.....	"
W. h'f of N. W	23	95	33	.....	"
N. E. of N. W	23	95	33	.....	"
N. E. of S. W	23	95	33	.....	"
W. h'f of S. W	23	95	33	.....	"
E. h'f and E. h'f of S. W	25	95	33	.....	"
N. E. of N. E	27	95	33	.....	"
W. h'f of N. E	27	95	33	.....	"
W. h'f of S. E. and W. h'f sec	27	95	33	.....	"
N. E. q'r, N. h'f of S. E., and E. E. h'f of N. W	29	95	33	.....	"
N. h'f of N. E. & N. h'f of N. W	33	95	33	.....	"
W. h'f, S. W. of N. E., and S. E. q'r	35	95	33	6,649.80	"
E. h'f, N. h'f of N. W. & S. E. of S. W	1	96	33	.....	"
S. E. q'r, N. W. q'r, E. h'f of S. W., and N. W. of S. W.	3	96	33	.....	"
E. h'f and S. W. q'r	5	96	33	.....	"
E. h'f, N. W. q'r, E. h'f of S. W., and N. W. fr. q'r of S. W.	7	96	33	.....	"
S. h'f and N. W. q'r	9	96	33	.....	"
E. h'f of N. E. and S. W. of N. E	9	96	33	.....	"
S. E. of S. W	13	96	33	.....	"
N. h'f and N. h'f of S. E	15	96	33	.....	"
E. h'f of S. W. and S. W. of S. W	15	96	33	.....	"
N. h'f and S. W. q'r	17	96	33	.....	"
N. h'f of S. E. and S. E. of S. E	17	96	33	.....	"
984 E. h'f and N. W. q'r	19	96	33	.....	"
E. h'f of S. W. and N. W. fr. q'r of S. W	19	96	33	.....	"
N. h'f and S. E. q'r	21	96	33	.....	"

Des Moines Valley Railroad lands—Continued.

Parts of sections.	Sec.	Town.	Range.	Acres.	Remarks.
PALO ALTO CO.					
N. h'f of S. W. and S. E. of S. W.	21	96	33		In place.
W. h'f of N. E. and W. h'f sec.	27	96	33		"
N. E. q'r and N. h'f of S. E.	29	96	33		"
S. E. of S. E.	29	96	33		"
N. h'f of N. W.	29	96	33		"
S. W. of N. W. & W. h'f of S. W.	29	96	33		"
W. fr. h'f, S. E. q'r, & W. h'f of N. E.	31	96	33		"
E. h'f and E. h'f of N. W.	33	96	33	6, 783. 29	"
N. W. of N. W. & E. h'f of S. W.	33	96	33		"
W. h'f, S. E. q'r, & S. W. of N. E.	1	97	33		"
N. h'f, S. E. q'r, & S. h'f of S. W.	3	97	33		"
N. W. of S. W.	3	97	33		"
All	5	97	33		"
W. fr. h'f.	7	97	33		"
N. h'f of N. E.	7	97	33		"
S. W. of N. E. and N. h'f of S. E.	7	97	33		"
W. h'f and W. h'f of N. E.	9	97	33		"
W. h'f of S. E.	9	97	33		"
N. h'f and W. h'f of S. E.	11	97	33		"
S. E. of S. E. & N. h'f of S. W.	11	97	33		"
All	13	97	33		"
E. h'f and E. h'f of N. W.	15	97	33		"
N. W. of N. W. & E. h'f of S. W.	15	97	33		"
E. h'f, S. W. q'r, & W. h'f of N. W.	17	97	33		"
All	19	97	33		"
W. h'f, W. h'f of N. E., and N. E. of N. E.	21	97	33		"
E. h'f and E. h'f of N. W.	23	97	33		"
N. W. of N. W.	23	97	33		"
N. E. of S. W. and S. W. of S. W.	23	97	33		"
All	25	97	33		"
N. E. of N. E. & S. h'f of N. W.	27	97	33		"
N. E. q'r and S. h'f of S. E.	29	97	33		"
N. W. of S. E. and E. h'f of N. W.	29	97	33		"
S. W. of N. W. and S. W. q'r.	29	97	33		"
S. W. of N. E.	31	97	33		"
S. W. of S. E.	31	97	33		"
N. W. fr. q'r & N. E. of S. W.	31	97	33		"
E. h'f and N. W.	33	97	33		"
N. h'f of S. W. and S. E. of S. W.	33	97	33		"
N. E. q'r and N. h'f of S. E.	35	97	33	8, 845. 00	"
W. h'f and E. h'f of N. E.	1	95	34		"
N. E. of S. E. and S. W. of S. E.	1	95	34		"
N. h'f of N. E.	13	95	34		"
985 S. E. of N. E. and N. E. of S. E.	13	95	34		"
W. h'f.	17	95	34		Indemnity.
N. h'f	29	95	34	1, 299. 50	"
All	1	96	34		In place.
N. E. of N. E.	11	96	34		"
W. h'f of N. E.	13	96	34		"
S. E. of N. E.	13	96	34		"
W. h'f of S. E.	13	96	34		"
N. E. of S. E.	13	96	34		"
E. h'f of N. W.	13	96	34		"
S. E. of S. W.	13	96	34		"
E. h'f of S. E.	23	96	34		"
W. h'f of N. E.	25	96	34		"
W. h'f of S. E.	25	96	34		"
E. h'f of N. W.	25	96	34		"
N. W. of N. W.	25	96	34		"
S. E. of S. W.	25	96	34		"
N. W. of S. W.	25	96	34		"
E. h'f of N. E. and N. E. of S. E.	35	96	34	3, 578. 14	"
N. h'f and S. E. q'r	3	97	34		"
W. h'f of S. W. and N. E. of S. W.	3	97	34		"
N. E. q'r, N. E. of S. E., and N. E. of N. W.	9	97	34		"
N. h'f, S. E. q'r, and S. E. of S. W.	13	97	34		"
N. E. q'r, N. h'f of S. E., and E. h'f of N. W.	15	97	34		"
W. h'f of N. E.	23	97	34		"
N. E. of N. E.	23	97	34		"
W. h'f of N. W.	23	97	34		"
N. E. of N. W.	23	97	34		"
E. h'f of S. E.	23	97	34		"
E. h'f of S. W.	23	97	34		"
S. W. of S. W.	23	97	34		"
S. E. of N. E.	25	97	34		"
S. E. q'r and W. h'f of N. W.	25	97	34		"
W. h'f of S. W.	25	97	34		"
E. h'f of N. E. and N. E. of S. E.	27	97	34		"
N. E. q'r	32	97	34		Indemnity.

Des Moines Valley Railroad lands—Continued.

	Parts of sections.	Sec.	Town.	Range.	Acres.	Remarks.
	PALO ALTO CO.					
	W. h'f of N. E.	35	97	34		In place.
	S. E. of N. E.	35	97	34		"
	S. E. q'r.	35	97	34		"
	W. h'f of N. W.	35	97	34		"
	N. E. of N. W.	35	97	34		"
	N. E. of S. W.	35	97	34	3,176.56	"
	Aggregate in Palo Alto Co.				75,349.77	
	EMMETT CO.					
	S. h'f.	8	100	31		Indemnity.
	S. h'f.	9	100	31		"
	S. h'f.	10	100	31		"
	All.	15	100	31		"
	E. h'f	18	100	31		"
	E. h'f	19	100	31		"
	All.	20	100	31		"
	All.	29	100	31		"
986	All.	31	100	31		"
	All.	32	100	31	4,769.12	"
	S. h'f.	3	98	32		"
	S. W.	4	98	32		"
	S. h'f	5	98	32		"
	W. fr. h'f of S. W.	7	98	32		In place.
	S. E. of S. W. and S. W. of S. E.	7	98	32		"
	W. h'f and S. E. q'r.	8	98	32		Indemnity.
	All.	10	98	32		"
	W. h'f.	14	98	32		"
	All.	15	98	32		"
	W. h'f and S. E. q'r.	17	98	32		W. h'f S. W. in place; bal. indemnity.
	All.	19	98	32		In place.
	All.	20	98	32		Indemni'y.
	W h'f	21	98	32		"
	E. h'f	22	98	32		"
	W. h'f.	23	98	32		"
	All.	27	98	32		"
	All.	28	98	32		"
	W. h'f sec., W. h'f of N. E., & S. E.	29	98	32		In place.
	All.	33	98	32	8,209.81	Indemnity.
	All.	1	99	32		"
	N. h'f	2	99	32		"
	All.	11	99	32		"
	W. h'f and S. E.	12	99	32		"
	W. n'f.	13	99	32		"
	N. h'f	14	99	32		"
	N. W	21	99	32	3,063.28	"
	S. h'f.	8	100	32		"
	All.	13	100	32		"
	All.	17	100	32		"
	N. E	18	100	32		"
	S. W.	21	100	32		"
	E. h'f	22	100	32		"
	All.	23	100	32		"
	All.	24	100	32		"
	All.	25	100	32		"
	All.	26	100	32		"
	E. h'f	27	100	32		"
	W. h'f.	28	100	32		"
	W. h'f.	34	100	32	5,760.00	"
	All.	3	98	33		In place.
	All.	5	98	33		"
	N. h'f of N. E., N. W. q'r and W. h'f of S. W.	11	98	33		"
	E h'f.	13	98	33		"
	Lot 1, E. h'f of S. W., and S. W. of S. W.	13	98	33		"
987	Lot 1 and N. W. q'r.	15	98	33		"
	E. h'f.	17	98	33		"
	E. h'f N. W. and S. W. q'r	17	98	33		"
	All.	21	98	33		"
	All.	23	98	33		"
	All.	27	98	33		"
	All.	29	98	33		"
	All.	33	98	33		"
	All.	35	98	33	6,647.69	"
	All.	1	99	33		Indemnity.
	All.	3	99	33		"
	All.	5	99	33		N. E. fr. ¼ place; balance.
	All.	9	99	33		In place.
	W. h'f of N. W., S. W. q'r and S. W. of S. E.	11	99	33		"

Des Moines Valley Railroad lands—Continued.

Parts of sections.	Sec.	Town.	Range.	Acres.	Remarks.
EMMETT CO.					
All	13	99	33		Indemnity.
All	17	99	33		In place.
All	19	99	33		In place.
All	23	99	33		"
W. h'f and N. E.	25	99	33		N. E. ¼ ind'm'ty; W. ½ in pla.
All	27	99	33		In place.
All	29	99	33		"
N. W. fr. q'r	31	99	33		"
N. h'f of S. E.	31	99	33		"
W. fr. h'f of S. W	31	99	33		"
N. E. of S. W	31	99	33		"
Lot 1 and W. h'f of N. E.	35	99	33		"
N. E. of N. E. and S. h'f of S. E	35	99	33		"
W. h'f	35	99	33	8,613.73	"
N. h'f of S. E. and S. E. of S. E	8	100	33		"
W. h'f and S. E. q'r	13	100	33		Indemnity.
All	14	100	33		"
All	15	100	33		"
W. h'f of N. E	17	100	33		In place.
S. E. fr. q'r and W. h'f	17	100	33		"
W. h'f	19	100	33		"
S. h'f of N. W.	21	100	33		"
N. W. of N. W	21	100	33		"
W. h'f of S. E	21	100	33		"
S. W	21	100	33		"
W. h'f	29	100	33		"
All	31	100	33		"
E. h'f	33	100	33	4,297.60	"
S. h'f and N. W. fr. q'r	1	98	34		"
All	3	98	34		"
All	11	98	34		"
All	15	98	34		"
All	17	98	34		{ N. W. q'r & W. h'f S. W. ind.; E. h'f sec. & E. h'f S. W. pla.
E. h'f	18	98	34		Indemnity.
E. h'f	19	98	34		"
W. h'f of N. W	20	98	34		"
All	21	98	34		In place.
All	23	98	34		"
All	27	98	34		"
E. fr. h'f and N. W. q'r	29	98	34		{ N. W. q'r indemnity, & E. fr. h'f in place.
All	33	98	34	6,627.80	In place.
S. W. of S. W	3	99	34		"
All	5	99	34		"
988 W. h'f	7	99	34		"
W. h'f	9	99	34		"
E. h'f of N. W	13	99	34		"
N. W. of S. W	15	99	34		"
All	17	99	34		"
All	19	99	34		"
S. h'f sec. and S. E. of N. E.	23	99	34		"
E. h'f	25	99	34		"
N. h'f of N. W. and S. h'f of S. W	25	99	34		"
All	29	99	34		"
All	31	99	34		"
S. E. q'r and W. h'f	35	99	34	5,383.94	"
E. h'f of N. E	7	100	34		"
W. fr. h'f of N. W	7	100	34		"
S. W of S. E	7	100	34		"
S. W. fr. q'r	7	100	34		"
N. h'f	9	100	34		"
N. W fr. q'r and S. h'f	11	100	34		"
All	13	100	34		"
W. h'f	15	100	34		"
E. h'f	17	100	34		"
E. h'f	19	100	34		"
E h'f of S W	21	100	34		"
N. h'f	21	100	34		"
E. h'f	23	100	34		"
E. h'f	25	100	34		"
E. h'f and S. W. q'r	27	100	34		"
E. h'f	29	100	34		"
All	31	100	34		"
W. h'f	33	100	34		"
N. W. q'r and N. h'f of S. W	35	100	34	5,498.92	"
Aggregate in Emmet Co				58,729.29	

Des Moines Valley Railroad lands—Continued.

Parts of sections.	Sec.	Town.	Range.	Acres.	Remarks.
IN SAC CO.					
S. h'f.	4	89	37		Indemnity.
E. h'f.	6	89	37		"
E. h'f of N. W. & N. W. of N. W.	6	89	37	760.00	"
BUENA VISTA CO.					
E. h'f.	9	93	36	320.00	"
S. h'f.	20	90	37		"
S. h'f.	26	90	37		"
All	28	90	37		"
All	30	90	37		"
All	34	90	37	2,585.22	"
E. h'f.	2	93	37		"
S. E.	4	93	37		"
N. h'f.	6	93	37		"
N. W.	14	93	37		"
All	20	93	37	1,670.93	"
Aggregate in Buena Vista Co.				4,576.15	
CLAY COUNTY.					
989 S. h'f.	2	94	36		Indemnity.
S. h'f.	5	94	36		"
N. h'f.	8	94	36		"
S. W.	10	94	36		"
N. h'f.	11	94	36		"
All	18	94	36		"
All	22	94	36		"
S. E.	33	94	36	2,880.00	"
S. h'f.	2	94	37		"
S. W. q'r	4	94	37		"
S. h'f.	5	94	37		"
W. h'f.	8	94	37		"
E. h'f	9	94	37		"
S. h'f and N. W.	10	94	37		"
S. h'f.	11	94	37		"
All	13	94	37		"
N. h'f.	14	94	37		"
E. h'f.	17	94	37		"
N. W. q'r.	28	94	37		"
N. h'f and S. W. q'r	29	94	37		"
E. h'f.	30	94	37		"
W. h'f.	32	94	37		"
S. W. q'r	35	94	37	5,120.00	"
E. h'f.	19	95	37		"
All	21	95	37		"
All	28	95	37		"
All	29	95	37		"
E. h'f.	31	95	37		"
All	32	95	37		"
All	33	95	37	3,840.00	"
S. h'f.	2	96	37		"
N. h'f.	14	96	37		"
All	22	96	37	1,280.00	"
All	26	94	38		"
N. h'f.	27	94	38		"
N. E.	28	94	38		"
All	36	94	38	1,680.00	"
S. h'f.	5	97	37		"
S. h'f.	6	97	37		"
All	8	97	37		"
All	17	97	37		"
E. h'f.	18	97	37		"
N. E.	19	97	37		"
S. E.	20	97	37		"
W. h'f.	21	97	37		"
E. h'f and N. W.	26	97	37		"
N. h'f.	27	97	37		"
All	29	97	37		"
S. E.	34	97	37	4,480.00	"
Aggregate in Clay County				19,280.00	
DICKINSON CO.					
S. h'f.	1	98	35		Indemnity.
S. h'f.	2	98	35		"
S. h'f.	4	98	35		"
S. h'f.	9	98	35		"
990 All	17	98	35		"
N. h'f.	20	98	35		"

Des Moines Valley Railroad lands—Continued.

Parts of sections.	Sec.	Town.	Range.	Acres.	Remarks.
DICKINSON CO.					
All	22	98	36		Indemnity.
All	27	98	35		"
S. h'f	29	98	35		"
All	31	98	35		"
All	32	98	35	5, 130. 34	"
S. h'f	1	99	35		In place.
N. E. fr. q'r. and E. h'f of S. E	3	99	35		"
All	5	99	35		Indemnity.
S. E	6	99	35		"
N. E	7	99	35		"
N. h'f	8	99	35		"
E. h'f sec. and S. W. of S. W	11	99	35		{ S. W. of S. W. indemnity ; E. h'f sec. in place.
E. h'f	13	99	35		In place.
S. h'f	17	99	35		Indemnity.
All	21	99	35		"
N. h'f of N. E	23	99	35		In place.
S. E. of N. E	23	99	35		"
E. h'f of S. E	23	99	35		"
N. W. q'r and E. h'f of S. W	25	99	35	3, 977. 87	"
All	9	100	35		"
All	11	100	35		"
All	13	100	35		"
E. h'f of N. E	17	100	35		"
N. W. of N. E	17	100	35		"
N. E. of S. E	17	100	35		"
N. h'f	21	100	35		"
S. E. q'r	21	100	35		"
E. h'f of S. W	21	100	35		"
All	23	100	35		"
E. fr. h'f of N. W	27	100	25		"
N. h'f of S. W	27	100	35		"
S. E. of S. W	27	100	35		"
All	29	100	35		Indemnity.
E. h'f	30	100	35		"
E. h'f	31	100	35		"
All	33	100	35	5, 438. 17	"
N. h'f and S. E	5	98	36		"
E. h'f	8	98	36		"
W. h'f	9	98	36	1, 120. 00	"
All	4	98	37		"
All	9	98	37		"
N. W	10	98	37		"
N. W	11	98	37		"
All	21	98	37		"
N. h'f	22	98	37		"
All	23	98	37		"
N. h'f and S. E	26	98	37		"
All	32	98	37		"
991 All	33	98	37		"
All	34	98	37	5, 601. 22	"
All	14	99	37		"
N. E. fr. q'r	26	99	37		"
W. h'f and S. E	35	99	37		"
S. fr. h'f	36	99	37	1, 508, 69	"
Aggregate in Dickinson Co				22, 776. 29	
IDA COUNTY.					
All	2	89	39		Indemnity.
All	4	89	39		"
All	10	89	39		"
All	24	89	39		"
All	26	89	39		"
All	34	89	39	3, 843. 96	"
CHEROKEE CO.					
W. h'f	20	90	39		Indemnity.
N. h'f	26	90	39		"
S. W. q'r	28	90	39		"
All	32	90	39		"
All	36	90	39	2, 080. 00	"
All	4	93	40		"
All	8	93	40	1, 305. 48	"
Aggregate in Cherokee Co				3, 385. 48	

Des Moines Valley Railroad lands—Continued.

Parts of sections.	Sec.	Town.	Range.	Acres.	Remarks.
O'BRIEN COUNTY.					
S. h'f	2	94	39		Indemnity.
S. h'f	3	94	39		"
W. h'f and S. E. q'r	10	94	39	1,120.60	"
All	4	94	41		"
W. h'f	10	94	41		"
E. h'f	22	94	41		"
All	28	94	41		"
All	32	94	41		"
W. h'f	34	94	41	2,720.58	"
S. h'f	4	95	41		"
E. h'f	8	95	41		"
All	9	95	41		"
W. h'f	10	95	41		"
E. h'f	17	95	41		"
All	20	95	41		"
All	21	95	41		"
All	28	95	41		"
E. h'f	30	95	41		"
All	32	95	41	4,800.00	"
All	10	97	42		"
W. h'f	11	97	42		"
E. h'f	12	97	42		"
All	15	97	42		"
All	20	97	42		"
W. h'f	21	97	42		"
E. h'f	30	97	42	3,200.00	"
Aggregate in O'Brien Co				11,840.58	
OSCEOLA CO.					
S. W. q'r	5	98	39		Indemnity.
S. E	6	98	39		"
All	8	98	39		"
All	17	98	39		"
992 E. h'f	18	98	39		"
E. h'f	20	98	39		"
W. h'f	21	98	39		"
All	28	98	39		"
All	29	98	39		"
All	35	98	39	4,480.00	"
All	4	98	40		"
N. h'f	9	98	40		"
All	10	98	40		"
S. h'f	13	98	40		"
All	15	98	40		"
N. h'f	23	98	40		"
N. h'f	24	88	40	3,208.30	"
All	9	99	40		"
S. h'f	15	99	40		"
All	23	99	40		"
All	25	99	40		"
N. h'f	26	99	40		"
S. h'f	35	99	40		"
All	36	99	40	3,520.00	"
E. h'f	10	98	42		"
All	11	98	42		"
All	15	98	42		"
W. h'f	27	98	42		"
All	28	98	42		"
S. h'f	29	98	42		"
N. h'f	32	98	42	3,200.00	"
Aggregate in Osceola County				14,408.30	
PLYMOUTH CO.					
All	2	90	43		Indemnity.
All	10	90	43		"
W. h'f, and N. E. q'r	18	90	43		"
E. h'f sec., and S. h'f of S. W	28	90	43		"
All	30	90	43	2,901.95	"
S. W. q'r	14	91	43		"
S. W. q'r	18	91	43		"
S. E. q'r	24	91	43		"
All	26	91	43		"
All	34	91	43		"
All	36	91	43	2,415.27	"
All	2	93	44		"

Des Moines Valley Railroad lands—Continued.

Parts of sections.	Sec.	Town.	Range.	Acres.	Remarks.
PLYMOUTH CO.					
All	12	93	44		Indemnity.
N. h'f	14	93	44	1,600.00	"
Aggregate in Plymouth Co				6,917.22	
SIOUX CO.					
W. f'r h'f	2	95	43		Indemnity.
993 S. E. q'r	3	95	43		"
E. h'f, and S. W. q'r	10	95	43		"
W. h'f	11	95	43		"
All	17	95	43	1,921.97	"
S. h'f	5	97	43		"
E. h'f	7	97	43		"
All	8	97	43		"
All	25	97	43		"
All	36	97	43	2,560.00	"
W. f'r h'f, and S. E. q'r	2	94	44		"
All	12	94	44		"
S. W	14	94	44		"
S. W	22	94	44		"
All	28	94	44		"
All	32	94	44		"
All	36	94	44	3,367.57	"
W. h'f and N. E. q'r	25	95	44		"
N. E. q'r	35	95	44	640.00	"
S. h'f	1	91	44		"
S. h'f	2	97	44		"
All	11	97	44		"
All	12	97	44	1,920.00	"
All	5	94	45		"
W. h'f	8	94	45		"
E. h'f	10	94	45		"
All	20	94	45		"
All	22	94	45		"
All	28	94	45		"
W. h'f, and N. E	32	94	45	3,698.34	"
E. h'f	11	95	45		"
All	12	95	45		"
S. W	14	95	45		"
All	22	95	45		"
All	23	95	45		"
All	27	95	45		"
All	32	95	45		"
W. h'f	33	95	45	4,000.00	"
All	28	95	46		"
All	29	97	46	1,280.00	"
All	14	97	47		"
E. h'f	15	97	47		"
E. h'f	22	97	47		"
All	23	97	47		"
N. h'f	24	97	47		"
S. E. q'r	25	97	47		"
N. W	26	97	47		"
All	27	97	47		"
W. h'f	34	97	47		"
S. h'f	35	97	47		"
All	36	97	47	4,480.00	"
All	5	97	48		"
E. h'f, and N. W. q'r	25	97	48		"
E. h'f	36	97	48	1,519.22	"
Aggregate in Sioux County				25,387.00	
LYON COUNTY.					
All	5	98	43		Indemnity.
All	6	98	43		"
994 All	21	98	43		"
All	28	98	43		"
All	33	98	43		"
All	35	98	43	3,867.47	"
All	3	99	43		"
All	4	99	43		"
E. h'f	8	99	43		"
All	9	99	43		"
E. h'f	18	99	43		"
All	17	99	43		"
E. h'f	20	99	43		"
E. h'f	30	99	43		"
All	29	99	43		"

Des Moines Valley Railroad lands—Continued.

Parts of sections.	Sec.	Town.	Range.	Acres.	Remarks.
LYON CO.					
E. h'f	32	99	43	4,809.38	"
All	25	100	43		"
All	26	100	43		"
E. h'f	27	100	43		"
All	34	100	43		"
W. h'f	35	100	43	2,560.00	"
All	2	98	44		"
E. h'f	7	98	44		"
All	8	98	44		"
W. h'f	10	98	44		"
E. h'f	11	98	44		"
All	12	98	44		"
All	14	98	44		"
E. h'f	15	98	44		"
E. h'f	20	98	44		"
All	21	98	44		"
All	22	98	44		"
E. h'f	27	98	44		"
All	28	98	44		"
All	34	98	44	7,062.20	"
All	5	98	45		"
E. h'f	7	98	45		"
All	8	98	45		"
All	11	98	45		"
All	12	98	45		"
All	15	98	45		"
All	20	98	45		"
All	23	98	45		"
E. h'f	30	98	45		"
All	28	98	45		"
All	29	98	45		"
E. h'f	31	98	45		"
S. E. q'r	32	98	45	6,946.14	"
N. h'f	2	99	45		"
S. h'f	3	99	45		"
995 S. h'f	4	99	45		"
All	9	99	45		"
All	10	99	45		"
S. E. q'r	11	99	45		"
All	14	99	45		"
All	15	99	45		"
All	22	99	45		"
S. E. q'r	23	99	45		"
All	27	99	45		"
All	28	99	45		"
E. h'f	32	99	45		"
S. E. q'r	33	99	45	6,240.00	"
All	17	100	45		"
All	20	100	45		"
All	21	100	45		"
All	28	100	45		"
All	33	100	45		"
All	34	100	45	3,840.00	"
All	12	98	46		"
All	23	98	46		"
All	24	98	46		"
W. h'f	25	98	46		"
All	26	98	46		"
All	36	98	46	3,520.00	"
Aggregate in Lyon Co				38,845.19	

996 CIX. *Conveyances by the State of Iowa to the Des Moines Valley Railroad Company.*

A portion of the lands embraced in the foregoing list were conveyed by a deed, of which the following is a copy, omitting the name of the county and a description of the lands:

State of Iowa, to all to whom these presents shall come, greeting:

Whereas the Des Moines Valley Railroad Company has deposited with the State treasurer money sufficient to pay the claims provided for

in chapter 108, Laws of the 10th General Assembly, and subsequent laws supplementary or amendatory thereto, wherein it is provided that upon compliance with the aforesaid requirements the lands granted to the State of Iowa by an act of Congress, approved July 12th, A. D. 1862, shall be conveyed to said railroad company in accordance with the terms and provisions of the fifth paragraph of the first section of chapter 57, Laws of the 12th General Assembly:

Therefore know ye that the State of Iowa, in consideration of the premises, and in conformity with the laws of the general assembly above referred to, has given and granted, and by these presents does give and grant, unto the Des Moines Valley Railroad Company, and to its assigns, the following-described lands, situate in County, Iowa, to wit:

(Description of lands.)

To have and to hold the same, together with all the rights, privileges, immunities, and appurtenances of whatsoever nature thereunto belonging, unto the said Des Moines Valley Railroad Company, and to its assigns forever.

{ GREAT SEAL OF STATE. } In testimony whereof I, Samuel Merrill, governor of the State of Iowa, have caused these letters to be made patent, and the great seal of the State of Iowa to be hereunto affixed. Given under my hand at Des Moines, the 23d day of February, in the year of our Lord one thousand eight hundred and sixty-nine, and of the State of Iowa the twenty-third.

SAMUEL MERRILL.

By the governor:

ED. WRIGHT,
Secretary of State.

I certify that the foregoing deed is recorded in vol. , page .

C. C. CARPENTER,
Register State Land Office.

997 The remainder of the lands embraced in the foregoing list *were* conveyed to the Des Moines Valley Railroad Company by deeds, of which the foregoing is a copy, ommitting the name of the county and a description of the lands, and changing the date to the 3d day of January, 1871.

998 CX. *Secretary Browning to the Commissioner of the General Office, February* 27, 1869.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., February 27, 1869.

SIR: I return the papers received, with your letter of the 7th August last, in the case of Ezra H. Bennett, involving the right to the S. W. of S. E. qr. of sec. 1, t'p 82, range 26, Des Moines, Iowa.

This tract having been sold by the State of Iowa, prior to the passage of the joint resolution of March 2, 1861, the title of the United States was, by said resolution, relinquished to said State, and your decision, adverse to the pre-emption of said Bennett is affirmed.

Very respectfully, your obedient servant,

O. H. BROWNING,
Secretary.

COMMISSIONER OF THE GENERAL LAND OFFICE.

Cash. 21200.

CXI. *Secretary Browning to the Commissioner of the General Land Office, February 27th, 1869.*

DEPARTMENT OF THE INTERIOR,
Washington, D. C., Feb. 27, 1869.

SIR: I have received your letter of the 22d December last, submitting the papers, in the case of Levi Hull, involving the right to the S. E. qr., N. E. qr., and lot 1, sec. 17, 83, 26, Des Moines, Iowa.

This tract is situated "above the mouth of the Raccoon Fork, in the State of Iowa," and prior to the passage of the joint resolution of March 2d, 1861, had "been certified to said State, improperly by the Department of the Interior as a part of the grant by act of Congress, approved August 8th, 1846," and was then held by a bona-fide purchaser under the State of Iowa, and the title of the United States, was, by said resolution relinquished to said State. Your decision, in favor of the pre-emption of said Hull, is therefore reversed. This decision will be made applicable to all similar cases. I return the papers herewith.

Very respectfully, your obedient servant,

O. H. BROWNING,
Secretary.

Hon. JOS. S. WILSON,
Commissioner General Land Office.

999 CXII. *Commissioner Wilson to Secretary Cox, Sept. 17th, 1869.*

DEPARTMENT OF THE INTERIOR,
General Land Office, Sept. 17, 1869.

Hon. J. D. COX,
Secretary of the Interior.

SIR: Referring to your letter of the 26th of February last, submitting to the Department proper, an appeal by Henry Beard, esq., from our ruling of the 25th of February, 1869, relative to pre-emption and homestead entries on certain odd sections of land within five miles of the Des Moines River, Iowa, I have the honor to submit, herewith, a letter of 13th inst., from the register at Des Moines, Iowa, representing the anxiety of the settlers in the matter.

I am, sir, very respectfully, your obedient servant,

JOS. S. WILSON,
Commissioner.

U. S. LAND OFFICE,
Des Moines, Iowa, Sept. 13th, 1869.

Hon. JOS. S. WILSON,
Commissioner General Land Office.

SIR: Hundreds of persons who have settled upon and claim
1000 lands known and situated within the Des Moines River grant, above the Raccoon Fork, are continually, daily, making inquiry at this office in relation to their claims, the probable result, or final decision by your department, and they are growing very impatient, and give me much trouble.

There are quite a number of cases on my desk not disposed of, awaiting some action in your Department. I write to inquire if anything has been , or is likely to be soon, that will settle this long-pending controversy about Des Moines River lands. It is a great curse to our State.

Very respectfully, your obedient servant.

F. G. CLARK, *Register.*

CXIII. *Secretary Cox to the Commissioner of the General Land Office, Aug. 25, 1870.*

DEPARTMENT OF THE INTERIOR,
Washington, D. C., Aug. 25, 1870.

SIR: On the 27th day of February, 1869, my predecessor, in returning to your office the papers in the case of Levi Hull, involving the right
1001 to the southeast of the northeast quarter, and lot No. 1, section 17, township eighty-three, range 26, in the Des Moines land district, Iowa, remarked that said tract was *was* situated above the mouth of the Raccoon Fork in that State, and formed a part of the lands, which, prior to the passage of the joint resolution of March 2, 1861, had been certified to said State improperly by this Department, as a part of the grant by act of Congress, approved August 8th, 1846, and was then held by a bona-fide purchaser under the State of Iowa. He therefore held that Hull, whose settlement was subsequent to the withdrawal of the land, was not entitled to pre-empt it.

I have considered that decision, in connection with the papers submitted with your letter of the 17th of September last, relating to the claim of the Des Moines Navigation and Railway Company to certain land in that State, lying within five miles of the Des Moines River, above the Raccoon Fork, which, it is alleged, was improperly certified to the State in the years 1851, 1852, & 1853, for the improvement of that river under said act, and was sold by the State to bona-fide purchasers, the company being one of them, as, in that event, their
1002 title was, in the view of my predecessor, confined to them. They ask that it be respected by the Department, and that no pre-emption, homestead, or other entry be allowed to any such lands.

I did not reply to your letter at an earlier date, inasmuch as instructions had already been given to the local officers not to permit such entries; and as the questions passed upon by my predecessor were involved in the case of Hannah Riley vs. W'm B. Welles, then pending before the Supreme Court of the United States.

Welles derived the title by a deed from the Des Moines Company. Riley took possession of the tract in 1855, and claimed it under the pre-emption act of Sept. 4, 1841, upon proving settlement and cultivation. She was permitted to make entry at the local office, and a patent for the tract was issued to her in 1863. It was part of the lands falling within the category of those mentioned in the letter of my predecessor as having been improperly certified to the State.

The Supreme Court, at the last term, held that the joint resolution and the act of July 12, 1862, confirmed the title in the company, and that Riley's entry & the patent issued to her, were in violation
1003 of law and void.

The judgment of the court below awarding the tract to Welles, was affirmed.

As the decision of my predecessor has thus been sanctioned by the Supreme Court, it is the duty of the Department and of your office to execute it in all cases where it is applicable.

The papers are returned.

Very respectfully, your obedient serv't.

J. D. COX, *Secretary.*

To Hon. JOS. S. WILSON,
Com'r of the General Land Office.

1004 CXIV. *The decision of the Supreme Court of the United States in Hannah Riley, appellant, v. William B. Welles.*

HANNAH RILEY, APPELLANT,
v.
WILLIAM B. WELLES.

Appeal from the circuit court of the United States for the district of Iowa.

Mr. Justice NELSON delivered the opinion of the court.

This is an appeal from the circuit court of the United States for the district of Iowa.

This case is not distinguishable from that of Wolcott vs. The Des Moines Company, (5 Wall., 681.) Welles, the plaintiff below, derives his title by deed from this company, the same as Wolcott in the former case. The suit in that case was brought to recover back the consideration-money from the Des Moines Company, the grantors, on the ground of failure of title. The court held that Wolcott received a good title to the lot in question under his deed.

In that case it was insisted that the title was not in the Des Moines Company, but in the Dubuque and Pacific Railroad Company.

In the present case the defendant claims title under and in pursuance of the pre-emption act of September 4, 1841.

Her husband took possession of the lot in 1855, and she was permitted by the register to prove up her possession and occupation May, 1862. The patent was issued October 15, 1863.

It will appear from the case of Wolcott vs. The Des Moines Company, that the tract of land of which the lot in question was a part, had been withdrawn from sale and entry on account of a difference of opinion among the officers of the Land Department as to the extent of the original grant by Congress of lands in aid of the improvement of the Des Moines River, from the year 1846 down to the resolution of Congress of March 2, 1861, and the act of July 12, 1862, which acts we held confirmed the title in the Des Moines Company. As the husband of the plaintiff entered upon the lot in 1855 without right, and the possession was continued without right, the permission of the register to prove up the possession and improvements, and to make the entry under the pre-emption laws, were acts in violation of law, and void, as was also the issuing of the patent.

The reason for this withdrawal of the lands from public sale or private entry are stated at large in the opinion in case of Wolcott vs. The Des Moines Company, and need not be repeated. The point of reservation was very material in that case, and we have seen nothing in the present one, either in the facts or in the argument, to distinguish it.

The decree below affirmed.

1005 CXV. *Deposition of J. A. Harvey, Oct. 1st, 1870.*

In the United States circuit court, district of Iowa.

WILLIAM BAKER
vs.
JESSE WILLIAMS.

Depositions of Josiah A. Harvey, taken before me at my office in Sidney, in the county of Fremont, and State of Iowa, on this 1st day of October, 1870, in pursuance of the stipulation hereunto annexed, to wit:

The said witness, being first duly sworn, deposes and states—

Interrogatory 1st. What is your name, age, place of residence, and occupation?

Answer. My name is Josiah A. Harvey; my age is forty-two years; my place of residence is Sidney, Fremont County, Iowa; and my occupation, practicing law and farming.

Int. 2d. Are you acquainted with the parties or either of them; and if so, how long have you known them, or either of them?

Answer. I am not acquainted with the defendent. I have been acquainted with pl'ff, W'm Baker, as well as I now remember, some six or seven years.

Int. 3d. State whether or not you are the person designated and appointed as agent of the State of Iowa to adjust the land claims between the State of Iowa and the Government of the United States, in, by, and under the act of the general assembly of the State of Iowa, approved March 30, 1866, and entitled "An act providing for the adjustment of certain claims with the General Government?"

Answer I am the person appointed in and by said act a commissioner for the State of Iowa to adjust said claims.

Int. 4th. If you answer the third interrogatory in the affirmative, then state whether or not, as such agent, you undertook the discharge of the duties imposed by said act of the general assembly, and performed the same?

Answer. I did undertake the duties so imposed, and discharged the same, except as to claims arising under the swamp grant of Sept. 28, 1850, which, to a great extent, still remain unsettled.

Int. 5th. If you did as such agent und' said act make an adjustment of said land grants by the General Government to the State of Iowa, state when, and where, and by whom such adjustment was made, and whether or not at such adjustment any other persons appointed by the State to represent the interest of the Des Moines Valley Railroad Company was present; and if so, state who?

Answer. I effected adjustment of various claims at different and diverse times, but the adjustment concerning the "Des Moines River lands," and the one I understand to be referred to, was made about the 28th day of May, 1866, and received the Secretary's approval on the 29th of said month, and was made at the General Land Office, Interior Department of the General Government, in the city of Washington, District of Columbia, and by the Commissioner of the General Land Office, (acting under the approval and sanction of the Secretary of the Interior,) on the part of the Government, and myself on behalf of the State of Iowa, but before becoming complete or binding on the State, under the act of the legislature, the settlement was to have the sanction of the census board of the State. (A correct report of this settlement will be found in the report of the register of the State land office
1006 of the State of Iowa, of Nov. 12, 1867, commencing on page 23.)

No other person appointed by the State to represent the interest of the Des Moines Valley Railroad Company was present at the time the settlement was effected, if I remember correctly.

Int. 6th. State whether at such adjustment the corporation known and designated as "The Des Moines Navigation and Railroad Company" were present or represented, and also state whether or not said navigation and railroad company or any of its grantees, so far as you know, had any knowledge or notice of said adjustment, or of the time when the same would be made, and also state whether or not, so far as you know, the said "Des Moines Navigation and Railroad Company" were, directly or indirectly, parties to such adjustment, or were consulted

with reference to it, or assented to the same, or to the making thereof, as made and stated in your *in your* report of said adjustment to the census board of the State of Iowa?

Answer. Neither the "Des Moines Navigation and Railroad Company," nor any of its grantees, were present at such adjustment, nor were they or either of them, so far as I know, notified of the time when it would be made, or consulted in reference to it, and neither were, directly or indirectly, parties to said adjustment, or assented to the same, so far as I know.

Int. 7. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in the cause, or either of them, or that may be material to this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

Answer. Not being advised as to the matters in issue further than I gather from the interrogatories asked me, I am unable to determine what other facts of my knowledge would be of service to either party; but, as material to this examination, I properly state further as to the subject of the fifth interrogatory, that, although the "Des Moines Navigation and Railroad Company" was not represented there at the time the adjustment was completed, still it had, through its representatives and officers, been laboring to have the adjustment made on the terms on which it was made, (as set forth in my report above referred to, and as shown in papers on file in the State land office,) and said adjustment was understood to be made with their assent and approbation, and in accordance with their desire.

And as to the subject of interrogatory sixth, I state further that, after my appointment as commissioner, I had, both before and after said adjustment was made, conversations on the subject with John Browne, the agent (as well as a member) of the "Des Moines Navigation and Railroad Company;" he knew that the adjustment would be made and the terms of it, and always sought these interviews, or brought about the conversations, for the purpose, apparently, of objecting to the proposed action. He was inclined to protest against it as an infringement on the rights of *of* said company and its grantees; and although I did not notify him of the exact time, I did give him to understand that, under the State legislation and the law as understood to be settled in the Litchfield case, (the decision in the Wolcott case not being then made,) I felt warrented in making the adjustment on the terms proposed, and would do so, leaving all who considered themselves aggrieved thereby to seek redress in the court.

JOSIAH A. HARVEY.

STATE OF IOWA, *Fremont County, ss:*

I, J. C. Shockley, clerk of the district court in and for said county, hereby certify that the foregoing deposition of J. A. Harvey was taken before me at my office in Sydney, in said county, on the 1st day of October, 1870, in pursuance of stipulation hereunto attached; that
1007 said witness was sworn to testify the whole truth of his knowledge touching the matters in issue in said cause, and to make true answers to the inter'ogatories propounded, and that he transcribed said interrogatories, and wrote out his said deposition in his own hand, and then subscribed and swore to the same before me the day above written.

Witness my hand and official seal the aforesaid.

[SEAL.] J. C. SHOCKLEY, *Clerk D. C.*

1008 CXVI. *Act of Congress confirming the Ha'vey-Wilson settlement, March 3rd*, 1871.

An act confirming titles to certain lands.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the title to the land certified to the State of Iowa by the Commissioner of the General Land-Office of the United States, under an act of Congress entitled "An act confirming a land claim in the State of Iowa, and for other purposes," approved July 12, 1862, in accordance with the adjustment made by the authorized agent of the State of Iowa and the Commissioner of the General Land Office, on the twenty-first day of May, anno Domini eighteen hundred and sixty-six, and approved by the Secretary of the Interior on the twenty-second day of May, anno Domini eighteen hundred and sixty-six, and which adjustment was ratified and confirmed by act of the general assembly of the State of Iowa, approved March thirty-one, eighteen hundred and sixty-eight, be, and the same is hereby ratified and confirmed to the State of Iowa and its grantees, in accord-
1009 ance with said adjustment and said act of the general assembly of the State of Iowa: *Provided*, That nothing in this act shall be so construed as to effect adversely any existing legal rights or the rights of any party claiming title or the right to acquire title to any part of said lands under the provisions of the so-called homestead or pre-empted laws of the United States, or claiming any part thereof as swamp lands.

Approved March 3, 1871.

1010 CXVII. *Stipulation and certificate as to date of survey.*

THE IOWA HOMESTEAD COMPANY
v.
THE DES MOINES NAVIGATION COMPANY AND others.

This additional stipulation is made:

That township eighty-nine (89) and ninety, (90,) range twenty-nine west, north of the second correction line were surveyed in 1854.

It is further stipulated without filing the deeds thereof, that the plaintiffs have all the title of the Dubuque and Sioux City Railroad Company to the lands in controversy.

GRANT & SMITH,
For Pl'ffs.

MAY, 1871.

1011 STATE OF IOWA:

STATE LAND OFFICE,
Des Moines, May 18th, 1871.

I, Aaron Brown, register of the State land office of the State of Iowa, hereby certify that township eighty-nine (89) and ninety, (90,) N. of range twenty-nine (29) west, and west of the Des Moines River, Iowa, were surveyed into sections by the deputy surveyor of the United States in May, 1854, as appears by the field-notes and plats of the original Government surveys in this office.

In testimony whereof I have hereunto set my hand and affixed my official seal the date first above written.

[SEAL.] AARON BROWN, *Register.*

1012 CXVIII. *Stipulations between the parties.*

In the circuit court of the United States.

IOWA HOMESTEAD COMPANY
v.
THE DES MOINES VALLEY RAILROAD COMPANY et al.

It is agreed that either party may read in evidence the printed copy of any act of Congress, or of the legislature of Iowa, or any communication by any officer of the Government of the United States, or of the State of Iowa, subject to objections to the same on the ground that it is irrelevant or incompetent. All other objections are expressly waived.

After the trial of the cause in this court, the counsel for the parties shall prepare a statement of the papers and documents submitted on the hearing, for the purpose of making up a record for the Supreme Court of the United States; and in said statement no paper or document shall appear more than once.

1013 It is further stipulated that either party may read any portion of the documentary evidence submitted in the case of Baker v. Williams and Wells v. Riley, subject to objection on ground of incompetency or irrelevancy.

It is further stipulated that the defendants who claim as grantees of the Des Moines Navigation & Railroad Company have good and sufficient conveyances to themselves, severally, of all the title which the said company ever had in the lands claimed by them.

It is admitted that the Dubuque & Sioux City Railroad Company has whatever title the Dubuque and Pacific Railroad Company had in the lands in controversy.

It is also admitted that the Des Moines Valley Railroad Company complied with the terms of the several acts of the legislature of Iowa, granting to it the lands in controversy, claimed by said railroad company, and completed its road to Fort Dodge before January 1st, 1870, and paid to the State of Iowa $160,000 in cash, as required by the act of 1868 for said lands.

1014 It is agreed that the only questions submitted on the hearing are—

1. In which of the parties is the paramount title to the lands in controversy?

2. If the title shall be adjudged to be in the defendant, The Des Moines Navigation & Railroad Company, is the plaintiff entitled to be re-embursed the taxes which it has paid on the lands?

The amount of taxes paid is admitted to be $2,000. If the court shall find that the plaintiff is entitled to be so reimbursed, the question of amount to be reimbursed shall be referred to a master, and the defendants shall have a right to show any counter claim or other matter which should be considered as reducing the amount to be reimbursed.

It is admitted that D. W. Kilbourne was a director of *a* Des Moines Valley Railroad Company from 1862 to 1867.

It is admitted that the Dubuque & Sioux City Railroad was completed to Sioux City July 4th, 1870.

GRANT & SMITH, *for Pl'ff.*
WITHROW & WRIGHT, *for D. V. R. R. Co.*
S. L. STRONG & WITHROW & WRIGHT, *For D. M. V. R. R.*
C. C. NOURSE, *For R. S. Burrows.*

Filed May 13, 1871.

1015 Circuit court of the United States.

THE IOWA HOMESTEAD COMPANY
v.
DES MOINES NAVIGATION & RAILROAD COMPANY et al.

It is agreed, between the counsel for the complainants and defendants who have appeared and answered that the foregoing cause was tried in the circuit court, upon the bill, amendments, answers, replications, exhibits, and depositions, offered by plaintiff and defendant, at and in the foregoing record, which the parties agree to examine and correct when printed.

It is further agreed that the plaintiffs have all the title to the property in dispute which lawfully belonged to the Dubuque & Sioux City Railroad Company, its assignee.

It is also agreed that either party should be authorized to read, either in the court below or supreme court, all acts, resolutions, and memorials, journals, or public documents of Congress, or of the State of Iowa,
1016 which relate to the matter in controversy, without offering them formerly to the court, and use them in argument by proper reference.

It was also agreed that if either has omitted from their record any public record of the State or United States which relates to the matter in controversy, the same may be read and considered in the appeal court by furnishing the adverse party with notice thereof thirty days before argument—the object of both parties being to obtain a final adjudication of the questions made in the issues between the parties, or all the facts which belong to the same.

And it is further stipulated that the defendants Samuel G. Wolcott, Edwin C. Litchfield, Wm. J. McAlpine, Richard B. Chapman, Electus B. Litchfield, Edward Wade, and John Stryker, each and every of whom are citizens of New York, and The Des Moines Navigation & Railroad Company duly appeared in this court and filed their joint and
1017 several answers to complainant's bill, duly verified. That the said answer is not now found with the papers in this cause. That the said answer of said defendants was substantially in all respects like those of the defendants W'm B. Wells and Albert H. Tracy, on file herein and duly verified by them respectively, except such changes, variations, and alterations, as were necessary to present the interest held by said defendants respectively in the lands in controversy in this action.

And it is further stipulated and agreed that the said answer of defendant W'm B. Wells, verified by him, with the necessary changes, alterations, and variations, to show and present the proper and respective interests of the defendants Samuel G. Wolcott, Edwin C. Litchfield, W'm J. McAlpine, Richard B. Chapman, Electus B. Litchfield, Edwin

Wade, and John Stryker, and The Des Moines Navigation & Railroad Company shall be taken, created, and deemed the answer of said
1018 named defendants herein.

J. C. ELLWOOD,
For all the defendants he represents.
WITHROW & WRIGHT,
For all defendants they represent, except the Des Moines Valley Railroad Company.
GRANT & SMITH, *For Plaintiffs.*

(Indorsed:) Filed Oct. 20th, 1871. George B. Corkhill, clerk.

1019 In the Supreme Court of the United States.

THE IOWA HOMESTEAD COMPANY
v.
THE DES MOINES NAVIGATION AND RAILROAD Company, et al.

To prevent unnecessary incumbrance of the record in this cause, it is stipulated that the evidence in the court below established the following facts:

1. That, on the 27th day of December, 1858, there was certified to the State of Iowa, under the act of May 15th, 1856, to aid in the construction of the Dubuque & Pacific R'd, lands as follows:	2,361.08 acres. 5,901.49 103,341.61 210,722.48 344,225.20 480,929.21	1,147,280.87
1020 2. That, on the 7th of April, 1863, there was certified to the State for the same purpose, additional lands, as follows:	56,473.32 21,061.91 1,382.42	78,917.25
3. And on the 13th of Dec., 1864.....		159.60
		1,224,358.12

4. That the lands certified on the 27th day of December, 1858, embraced none of the lands in dispute in this controversy, and no lands lying in odd-numbered sections within five miles of the Des Moines River.

5. That the lists made on the 7th of April, 1863, and the 13th of December, 1864, embrace all of the lands in dispute, except indemnity-lands, and all were on odd-numbered sections within five miles of the Des Moines River.

6. That all of the lands certified in 1863 and 1864, except those lying on the west side of the Des Moines River, in townships 89 and 90,
1021 ranges 28 and 29, had been certified to the State of Iowa prior to the 15th day of May, 1856, as a part of the grant made by the act of August 8th, 1846; that the manner and dates of said certifications appear by the official letters and orders set out in the evidence offered by the parties.

7. That all of the lands in controversy which were certified to the State as a part of the grant made by the act of 1846, were so certified

prior to the year 1854; that the lands embraced in townships eighty-nine (89) and ninety (90) ranges twenty-eight (28) and twenty-nine, (29,) west of the Des Moines River, were not surveyed until 1854, and were never embraced in any list certified to the State under the act of August 8th, 1846; that no list under said act was certified to the State after said lands were surveyed; that, in 1863 and 1864, said lands
1022 were certified under the act of May 15th, 1856, and that they have never been otherwise certified.

8. That the lands certified as above recited, in 1858, to aid in the construction of said railroad, embraced all of the lands lying between the Mississippi and Missouri River, and claimed by said railroad company to be within the limits of its grant, saving and excepting those certified to the State in 1863 and 1864.

WITHROW & WRIGHT,
For The Des Moines Navigation and Railroad Company, and The Des Moines Valley Railroad Company.
GRANT & SMITH, *For Pl'f's.*

1023 And afterward, to wit, on the 31st day of May, in the May, A. D. 1871, term of said court, in the record of the proceedings thereof in said entitled cause, there appears the following entry, to wit:

THE IOWA HOMESTEAD COMPANY *vs.* THE DES MOINES NAVIGATION AND RAILROAD COMPANY. } No. 121. Equity.

This cause came on to be heard at the May term, 1871, of said court, Grant & Smith for the plaintiff, and Ellwood, Nourse & Withrow, for The Des Moines Navigation and Railroad Company & purchasers, and Withrow & Strong for The Des Moines Valley Railroad Company. And the cause is heard upon the bill and amendments, answers, replications, agreements of counsel, exhibits, and depositions; and thereupon it was ordered, adjudged, and decreed, that the plaintiff's bill as to the lands in townships 86, 87, & 88, ranges 27, 28, 29, & 30 east, & west of the Des Moines River, & south of the second correction line, and townships 89, 90, 91, & 92, range' 28 & 29 east of the Des Moines River;
1024 and the bill for relief for indemnity lands in lieu thereof, be dismissed, and the bill for relief as to the lands in townships 89, 90 north, range' 28 & 29 west, on west side of Des Moines River, be dismissed without prejudice, and that the plaintiffs pay the costs.

And thereupon plaintiffs pray an appeal to the Supreme Court in open court, during the term, which is allowed (him) on his filing bond with Charles Whitaker as surety, in the penal sum of one thousand dollars, conditioned as the law directs; and said bond is thereupon filed and approved.

1025 And on this day, to wit, the 31st day of May, A. D. 1871, the plaintiff, by Grant & Smith, files its appeal bond in said cause, which said appeal bond is in words and figures following, to wit:

Know all men by these presents that we, The Iowa Homestead Company, principal, and Charles Whitaker, surety, are held and firmly bound unto The Des Moines Navigation and Railroad Company, Samuel

G. Wolcott, William B. Welles, Roswell Burrows, Edwin C. Litchfield, W'm J. McAlpine, Richard B. Chapman, Albert H. Tracy, Francis W. Tracy, Harriet Tracy, Electus B. Litchfield, Edward Wade, John Striker, The Des Moines Valley R. R. Co., Thomas Colter, Jacob Crouse, & Jno. P. McDermott, in the penal sum of one thousand dollars; to which payment we bind ourselves and each of us jointly, severally by these presents, given under our hands this 9th June, 1871.

The condition of this obligation is this: Whereas the said Iowa Homestead Company has prayed and been allowed an appeal from a decree of the circuit court of the United States for the district of Iowa, in equity, entered at the May term, 1871, at Des Moines, against
1026 the said Iowa Homestead Company, wherein said company is plaintiff and said obligees defendants: Now, if said Iowa Homestead Company shall duly prosecute said appeal & abide by and perform the orders of the supreme court in the said appeal case, and pay all costs and damages which may be assessed against it, this obligation to be void; otherwise to remain in full force.

THE IOWA HOMESTEAD CO.,
By GRANT & SMITH, *Att'ys.*
C. WHITAKER.

(Endorsed:) Filed June 9, 1871. George B. Corkhill, clerk.

1027 Circuit court of the United States, district of Iowa.

I, George B. Corkhill, clerk of said court for said district, do hereby certify that the above and foregoing is a full, true, and complete transcript of all the pleadings, exhibits, depositions, documents, and record entries in a certain cause adjudicated in said court, wherein The Iowa Homestead Company was plaintiff, and The Des Moines Navigation and Railroad Company et al. *was* defendants, as full, true, and complete as the originals of the same now remain on file and of record in my office.

In witness whereof I hereunto set my hand and affix the seal of said court at Des Moines, in said district, this 20th day of October, A. D. 1871.

[SEAL.] GEORGE B. CORKHILL, *Clerk.*

1028 The following agreement was filed in said cause by the parties on the 20th day of October, A. D. 1871.

Circuit court of the United States for the district,

THE IOWA HOMESTEAD COMPANY
vs.
THE DES MOINES NAVIGATION AND RAILROAD Company & others.

It is agreed between the counsel for the complainants and defendants who have appeared and answered, that the foregoing cause was tried in the circuit court upon the bill, amendments, answers, replications, exhibits, and depositions offered by plaintiff and defendant at and in the foregoing record, which the parties agree to examine and correct when printed.

It is further agreed that the plaintiffs have all the title to the property in dispute which lawfully belong to Dubuque and Pacific Railroad Company, or Dubuque and Sioux City Railroad Company, its assignee. It is

also agreed that either party should be authorized to read either in the court below or in the Supreme Court, all acts, resolutions, and memorials, journals, or public documents of Congress or the State of Iowa,
1029 which relate to the matter in controversy without offering them formally to the court, and use them in argument by proper reference.

It was also agreed that, if either has omitted from their record any public record of the State or United States which relates to the matter in controversy, the same may be read and considered in the appeal court by furnishing the adverse party with notice thereof thirty days before argument—the object of both parties being to obtain a final adjudication of the questions made in the issues between the parties or all the facts, which belong to the same. And it is further stipulated that the defendants Samuel G. Wolcott, Edwin C. Litchfied, W'm J. McAlpine, Richard B. Chapman, Electus B. Litchfield, Edward Wade, and John Stryker, each and every of whom are citizens of New York, and the Des Moines Navigation and Railroad Company, duly appeared in this court and filed their joint and several answers to complainant's bill, duly verified. That the said answer is not now found with the papers in this cause; that the said answers of said defendants was substantially in all respects like those of the defendants W'm B.
1030 Welles and Albert H. Tracy, on file herein, and duly verified by them, respectively, except such changes, variations, alterations, as were necessary to present the interests held by said defendants, respectively, in the lands in controversy in this action.

And it is further stipulated and agreed, that the said answer of defendant William B. Welles, verified by him, with the necessary changes, alterations, and variations to show and present the proper and respective interest of the defendants Samuel G. Wolcott, Edwin C. Litchfield, W'm J. McAlpine, Richard B. Chapman, Electus B. Litchfield, Edwin Wade, and John Stryker, and De' Moine' Navigation and Railroad Company, shall be taken, treated, and deemed the answer of said last-named defendant herein.

J. M. ELWOOD,
For all the Defendants he represents.
WITHROW & WRIGHT,
For all the Defendants they represent, except the Des Moines Valley Railroad Co
GRANT & SMITH, *For Pl'ff.*

(Endorsed:) Flied October 20, 1871. George B. Corkhill, clerk.

(Indorsement on cover:) No. 357. The Iowa Homestead Company, appellants, vs. The Des Moines Navigation and Railroad Company et al. Iowa C. C. U. S. Filed 26th October, 1871.

4-84 Record

In the Supreme Court of the United States.

THE IOWA HOMESTEAD COMPANY, *Appellants*,
vs.
THE DES MOINES NAVIGATION & RAILROAD COMPANY, *et al.*, *Appellees*.

128

Appeal from the Circuit Court of the United States for the District of Iowa.

ARGUMENT FOR APPELLANTS,

BY JAMES GRANT.

Globe Steam Print, Davenport.

In the Supreme Court of the United States.

THE IOWA HOMESTEAD COMPANY, *Appellants*,
vs.
THE DES MOINES NAVIGATION & RAILROAD COMPANY, *Appellees*.

Appeal from the Circuit Court of the United States for the District of Iowa.

ARGUMENT FOR APPELLANT.

STATEMENT OF PLEADINGS AND EVIDENCE.

The appellants, the Iowa Homestead Company, a corporation created by the laws of the State of Iowa, filed their bill in the Webster County District Court of the State of Iowa, to enjoin a multiplicity of suits at law, and to quiet their title to about fifty-five thousand acres of land, being the odd sections within five miles of the Des Moines River, in townships 86, 87 and 88, ranges 27, 28, 29 and 30, west, which lie south of the second correction line, and townships 89, 96, 91 and 82, ranges 28 and 29, east of the Des Moines River, claimed by the Des Moines Navigation Company and its assignees, and the odd sections in

townships 89 and 90, ranges 28 and 29, west of the Des Moines River, being 20,000 acres claimed by the Des Moines Valley Railroad Company, situate in Webster and Hamilton counties, Iowa.

Record page 10, amended bill 208.

The bill recites the grant of Congress of 8th August, 1846, to the Territory of Iowa, of certain alternate sections of land, within five miles of the Des Moines River, to improve the navigation from its mouth to the Raccoon Fork, to be selected by an agent of the Territory, subject to approval by the Secretary of the Treasury; and the various constructions of that act: On the 17th of October, 1846, the Commissioner of the General Land Office notified the Governor of Iowa that the grant extended to the Raccoon Fork. On the 23d of February, 1848, he notified the Board created for improving the river, that the grant extended from its mouth to the source of the river. On the 19th of June, 1848, a proclamation was made by Young, Commissioner of the General Land Office, bringing the odd sections into market, north of the Raccoon. The Board of Public Works protested against this, but no notice of this was taken by him. On 2d March, 1849, on appeal to Walker, Secretary of the Treasury, he held that the grant extended to the source of the river. The lands proclaimed were withheld from sale, but no selection made or allowed to the State north of the Raccoon.

On the 16th of April, 1850, Ewing, Secretary of the Interior, reversed Walker's decision, and held that the grant did not extend north of the Raccoon, and appeal was made to President Taylor, and Johnson his Attorney-General agreed with Walker. No decision was made by Taylor before his death; after which a new Cabinet was formed, and Crittenden, on 30th June, 1851, reversed Johnson's opinion, and decided that the grant did not extend north of the Raccoon Fork. On 29th July, 1851, Stuart Secretary of the Interior, concurred in this opinion, but on 29th October, 1851, directed the Commissioner to furnish a list to certify to the State without prejudice, so that the

question might be decided by the judiciary. Lists were made out by Stuart, in compliance with this letter, on 30th October, 1851, and by McLelland, under the same construction and letter, on 10th March, 1852, and in one or the other of these lists, are included the 55,000 acres east of Des Moines and south of the correction line, now in controversy. On the 21st March, 1856, the Commissioner of the General Land Office again decided that the grant did not extend north of the Raccoon Fork. The question was referred to the Attorney General, who thought the selection final, but advised a settlement with the State, which was not accepted. On the 7th day of May, 1858, the Secretary of the Interior rejected the claim of the State. An appeal was taken to the President, who referred the question to the Attorney-General, who on the 22d of November, 1858, held that the claim of the State did not extend north of the Raccoon Fork.

In December, 1859, in a suit by E. C. Litchfield, for the Navigation Company or its title vs The Dubuque & Sioux City Railroad Company, the Supreme Court of the United States held, that the grant of 8th August, 1846, did not extend north of the Raccoon Fork, and the acts of Stuart and McLelland were null and void, and by that decision carried the suggestion of the Secretary of Interior that the question was a judicial one and must be settled as it then was by the courts.

On the 15th May, 1856, Congress passed an act making a grant of land to the State of Iowa, in odd sections, to aid in the construction of certain railroads in that State. By section one, among other roads, was a grant of six sections per mile in odd sections, on each side of the road and if not found in six miles within fifteen miles, to build a railroad from Dubuque to Sioux City. The lands granted were to be applied only to the construction of the road, and all lands reserved by Congress, or in any other manner, by competent authority, for the purpose of aiding works of internal improvement, or any other purpose whatever, were excluded from the grant. Congress had, prior

to this, made a grant of swamp lands to the States which might and did, upon survey and location, include a part of the lands included in the railroad grant of 1856. This road crossing the Des Moines River above the Fork.

On the 14th July, 1856, the Legislation of Iowa accepted the grant of 15th May, 1856, parcelled out the lands to various railroad companies, and conveyed the whole grant, in direct terms, to each company. The title to the lands in dispute was conveyed by act of the Legislature, direct to the Dubuque & Pacific Railroad Company, which conveyed them to the Dubuque & Sioux City Railroad Company, which company, in 1863, conveyed them to the plaintiffs, which now hold all the title which the State ever had: the road being completed, and the Dubuque & Sioux City Railroad Company had earned and acquired title to these specific lands as early as 21st April, 1861.

After the opinion of Attorney General Black in 1858, the State of Iowa and the United States treated these lands as belonging to the railway, and not to the River grant, and application of the Des Moines Navigation Company for a title, as assignee of the State, was refused in 1860 and 1863.

On the 7th April, 1863, the Commissioner of the General Land Office and Secretary of the Interior approved these specific lands to the Dubuque & Sioux City grant, and they were certified to the State on that day, as part of the railway grant.

The State of Iowa, under the River grant of 8th August, 1846, undertook to improve the navigation of the river, and up to 9th June, 1855, had sold about 327,000 acres of land, of which amount 58,830 acres were above the Raccoon Fork. On 9th June, 1854, the State made a contract with the Des Moines Navigation & Railroad Company, to improve the navigation of the river for $1,300,000, and take the remaining lands in payment. This corporation made some progress in the work, and on 14th May, 1855, and 6th May, 1856, received certificates for 205,000 acres of land

all above the Raccoon Fork, except about 50,000 acres, and including the lands claimed by the plaintiffs. The Commissioner of the General Land Office refused to certify or convey any more lands after December 30, 1853, and there being no other provision made of the Des Moines Navigation Company, a settlement was made on 22d March, 1858. The Des Moines Navigation Company paid the State $20,000—took a relinquishment, by the State, of its title to the lands in controversy, and abandoned the work.

On the same date of the resolution of the State to release to Des Moines Navigation Company, the 22d March, 1858, the State conveyed its remaining interest, *subject to the grants to the Railroad Companies*, in the lands above the Fork to the Keokuk, Fort Des Moines & Minnesota Railroad Company, now the Des Moines Valley Railroad Company. (Record p. 86).

On the 2d March, 1861, Congress by a joint resolution held that the grant of 8th August, 1846, did not extend above the Raccoon Fork, and released to the State of Iowa, certain lands, above the Fork which had been improperly certified to the State, by the Secretary of the Interior, and were then held by *bona fide* purchasers from the State.

This joint resolution was construed by the State and Congress through their executive officers, to refer to settlers or other individuals, to whom the State had sold before the contract with the Des Moines Valley Railroad Company, amounting to about 58,000 acres, above the Fork. At that date the Dubuque & Sioux City Railroad Company, had by assent of the State and the construction of Litchfield case acquired title to the lands in controversy.

On the 12th July, 1862, Congress passed an act extending the grant of 8th August, 1846, so as to include the odd sections lying within five miles of the Forks of the Coon, to the northern boundary of the State. Said resolution of 2d March, 1861, an act of 12th July, 1862, were passed at the request of the Legislature of the State of Iowa, with an express reservation of the rights of the railway companies. Said

act provided that if any of the lands had been sold or otherwise disposed of by the United States before passage of that act, except those released by the joint resolution of 2d March, 1861, the Secretary of the Interior, should set apart an equal amount of lands, lying within the State, to be certified to the State in lieu thereof, and if the State had sold any of the lands lying within the limits of the grant, the title of which had proved invalid, any lands which should be certified to the State in lieu thereof, should be held in trust for the persons whose title had failed.

At the date of this act—the Supreme Court, in the case of Litchfield vs. Dubuque & Pacific Railroad Co., had decided that the grant of 8th August, 1846, did not extend north of the Fork of the Raccoon, and that the title of the Des Moines Navigation Company, to such lands as had been certified and conveyed to them above the Raccoon Fork, had failed, and had incidentally decided that the title of the Railroad Co., under the act of 15th May, 1856, was good.

Under the act of 12th July, 1862, the State of Iowa and the United States treated the title of the Dubuque & Pacific Railroad Company, under the act of 15th May, 1856, as a good title. The State of Iowa appointed Josiah A. Harvey, its agent, to adjust the title of the State under the resolution of 2d March, 1861, and act 12th July, 1862, and on 22d May, 1866, the title to the State, under them, was settled by a written agreement which was approved by the Census Board of Iowa, as required by the act, appointing Harvey on 20th June, 1866. Both the Secretary of the Interior and the State of Iowa, in that settlement, regarded the lands claimed by the plaintiffs as having been sold or disposed of by the United States, under the act of 1856, to the Dubuque & Sioux City Railroad Company, and the Secretary of the Interior set apart an equal amount of lands in lieu thereof, which were held by the State in trust for the parties whose title had proved invalid, which was the Des Moines Navigation Company's title. The lands referred to in the resolution of 2d March, 1861, were entirely different from those claimed by the Des Moines Navigation Company.

They were lands in place confirmed by joint resolution of March 2, 1861, 44,838.60 acres.
Quantity selected on the East Fork of the Des Moines River, and certified to the State under an original act of 8th August, 1846, 11,661.80 acres. See Harvey settlement.

By the act of 12th July, 1862, and by said settlement, the State of Iowa became the Trustee of the Des Moines Navigation Company and its assigns for such lands as were sold to them, and the title had failed. And if the Des-Moines Navigation Company's title was good, then the railroad's title had failed, and the State was a Trustee for that title.

As for the lands claimed by the plaintiffs west of the Des Moines River, the Navigation Company has never claimed them. The Des Moines Valley Railroad Company has disclaimed title as to part, and part it claims. If it now asserts any claim, it has none, having received from the State the indemnity, lands in lieu thereof, which in law, is a complete bar to their claim.

The State of Iowa has recently conveyed by quit claim to the Des Moines Valley Railroad Company all its title to the indemnity lands under the act of 12th July, 1862, but as to the quit claim for those held in trust it possesses no title, and if it did the Des Moines Valley Railroad Company holds them also in trust, and for no other purpose. The Des Moines Valley Railroad Company has executed to M. D. Gilman and N. A. Cowdrey, a deed of trust for all such land, without describing them as they had or might obtain from the State for building their railroad, and no other. After the enactment of 12th July, 1862, and the acceptance thereof by the State, and the settlement of May, 1866, Samuel G. Wolcott, a citizen of New York, claiming to be a purchaser of the Navigation Company of east half section 17, township 86 north, range 27 west, in Webster County, brought a suit for breach of warranty against the Navigation Company on a deed dated August

1st, 1859. This suit was brought by Wolcott in New York, by consent of the Navigation Company, instead of Iowa, by the laws of which it was created, and where alone it could reside and be sued on such a contract, and it was designed by the parties to make an agreed case to settle the construction of the act of Congress, in which the plaintiff and defendant had the same interest, adverse to the plaintiffs' in this suit, in which they jointly paid the costs and the attorneys on both sides were interested on the same side, and their object was to obtain an adjudication of the plaintiffs' title, and others like interested who were not before the Court. The suit was begun before the settlement, under the act of 12th July, 1862, but was not decided in this Court until after the rights of the plaintiff, as herein declared, had been admitted, and they were not set forth nor attended to by the Court. The settlement of 1866, and the construction of the act of 1862, were not known to the Court, and the decision in that case is neither a bar nor precedent in this. The purchasers of the Navigation Company were its stock-holders and none of them are *bona fide* without notice. They knew the construction put on the act of Congress, before they made their contract with the State. They knew of the passage of the act of 1856, and its construction, before they made their settlement and received the conveyance from the State.

The plaintiffs allege that theirs is the better title; that their bill is filed to quiet title and prevent a great number of suits, and they make exhibits of all the public documents and records material to the cause. They make the Navigation Company and its assignees parties. They make the Des Moines Valley Railroad Company parties. They claim to have been in possession since 1861 and paid taxes to the State to the amount of $80,000, and if their title has failed, they claim to be paid back by the true holder. The plaintiff prays for an injunction to enjoin the prosecution of the suits at law, that they may be quited in their title; that the conflicting acts, of the Secretary of Interior and judicial decisions, may be finally interpreted, or if theirs is not the better title, that they may decreed in-

demnity out of the trust lands, under the act of 12th July, 1862, and the Des Moines Valley Railroad Company may be decreed to relinquish the trust lands—and for other relief.

The injunction was allowed, (page 1) and the defendants Litchfield and others, transferred the cause to the United States Circuit Court.

In that Court, answers were filed by the defendants, the Navigation Company and its assignees,—record pages 249 to 278—and the Des Moines Valley Railroad Company, page 269, and replications to the answer.

The answers admitted the facts as set forth in the bill, and referred to many of the same record documents. All the defendants claimed as *bona fide* purchasers, and denied the legal construction of the plaintiff.

EVIDENCE.

The evidence consists of agreements of counsel, documentary proofs, and depositions of Brown, Booth and Harvey.

Brown, Register of the State Land Office, and Harvey, the State Agent, proved the certificates of the various lands in controversy, under the acts of '46 and '56, and the lands conveyed or certified to the State, under the acts of 2d March, 1861, and 12th July, 1862, and affirmatively, that in the settlement of the State under the resolutions of 1861, the Navigation Company was not claimed by the State as a *bona fide* purchaser, and their rights as such were not admitted. That under the act of 12th July, 1862, the State, by the settlement, conceded the railroad title to be good, and accepted, in lieu thereof, other lands. That the lands in 89 and 90, west of the Des Moines, were never certified to the State, except under the railway grant, and it was admitted, that they were not surveyed until after the last certificate of McLelland in December, 1853. The deposition

of Brown has a detailed list of all the lands, and each class, in place and indemnity under the act of 1856-61-62.

Booth's evidence was taken to prove that the railroad company had earned title to these specific lands, and paid taxes on them as early as 1858. That 1,152,139.32 acres of land, including those in controversy, were certified to the Dubuque & Sioux City Railroad Company, and the right to these lands accrued April, 1858.

It is not necessary to set out even the substance of the evidence in full. In the argument particular attention will be called to each material fact, and the cause will be better understood by this process.

The Court below dismissed (decree, page 488,) the plaintiff's bill as to the lands certified by Stuart and McLelland; dismissed the bill as to relief for the indemnity lands, and dismissed the bill as to the lands in townships 89 and 90, ranges 28 and 29, west of the Des Moines River, without prejudice.

ERRORS ASSIGNED BY THE APPELLANT.

The court below erred:

1st. In dismissing the plaintiffs bill to establish its title to the lands covered by the certificates of Stuart and McLelland, and certified to the plaintiffs' assignors in 1863, under the act of 15th May, 1856.

2d. The court erred in dismissing the plaintiffs' bill, claiming the indemnity lands under the act of 12th July, 1862.

No error is assigned as to the lands in 89 and 90, ranges 28 and 29—as to them the bill was dismissed without prejudice. The title is not incumbered by any subsequent grant or certificate under resolution of '61, or act of 1862, having been certified to the State solely under the act of 15th May, 1856, and the plaintiffs remedy at law was com-

plete, and it has since recovered in an action at law, the Des Moines Valley Railroad Company, having been refused a certificate under the act of 1862, and unable to defend such a suit.

ARGUMENT FOR APPELLANT.

I.

The appellants title is deduced thus:

The act of 15th May, 1856. (Record, page 89, 11, U.S., laws, 9.) The construction of this act in Litchfield v. D.& S. Co. 23, Howard, 1859, and the construction put upon it the executive of the United States, and the State of Iowa: see letters of Thompson to Johnson, Chairman Commissioner Public Lands, 11th June, 1860, Record 165, letter of C. B. Smith, 18th April, 1862, Record 73.

The Report of the House Committee, on the resolution of 2d March, 1861, copied in Williams v. Baker, Record page 59, Globe vol. 36, page 1130. The resolutions, 2d March, 1861, Record 88, 12 laws U. S. The act 12th July, 1862, Record page 12, laws U. S. 543.

The settlement of the State, and United States, under that act and admitting the R. R. title approved by State, Record page 212, to 221.

The confirmation of that settlement by Congress, acts Congress, 3d March, 1871, 15 U. S. Statutes, page 582. (Record 484, ——)

In the line of argument we propose to adopt, we shall admit that the decision of this Court, in Wolcott v. Des-Moines Navigation Company, 5, Wallace 681, was, upon the facts before the Court, and passed upon by it, correct.

In that case, this Court held that the lands, in controversy came within the reservation clause, of the 1st section of the act of 16th May, '56, and that the State did not acquire them for railroad purposes under that act.

But we shall show to this Court, by the whole history of that act, and subsequent legislation in connection with it, that the railway title (if it did not pass under that act), was construed by the State, and United States to pass under it, and that this construction was ratified by the United States and the State of Iowa.

We can most properly begin the history of these lands by noting the decision in Litchfield v. Dubuque & Pacific Railroad Company, 23 Howard, 66.

This Court in that case did decide, or at least admit, that these lands, passed to the railroad grant the act of 15 May, 1856,

The Court, said, page 83, "The Dubuque & Pacific Railroad Company, claims under the act of 1856. The section in dispute is one of those vested in the railroad company. This is the younger and inferior title, if the grant of 1846, extended the whole length of the River." The Court after reading the history of the grant of 1846, and particularly referring to the reservation of the lands, and the certificates of Stuart and McLelland, to the lands in dispute, down to the opinion of the Attorney-General Black, in 1858, page 86. says:

"On mature consideration, we are of opinion, that the title of neither party has been affected, by the proceedings of the Land Office, or by the opinions of the officers of the executive department, but that the claims of the parties under the two acts of Congress must be determined by the construction to be given to these acts: This we are required to do in decidi g this cause."

The Court then goes into the history of the act of 8th August, 1846—reciting by whom the bill was introduced, and a report of the committee on the public lands, and a letter from the Commissioner obtained by Mr. Dodge, who introduced the bill, and after citing the report and letter, as reasons for the construction put upon the act, which we shall cite again for another purpose, the Court held that

the grant of 1846 did not extend above the Raccoon, and finally said: "If the judgment of the District Court were affirmed, the defendant below would lose the land; if reversed, the plaintiff would lose it. The action was obviously brought" (It was an agreed case, same page,) to carry out Mr. Stuart's suggestion that the question was a judicial one. We have therefore felt bound to hear and decide the case on its merits, and finding that the plaintiff has no title."

It matters not that the form of the action in Litchfield's case was an action of right, and that the plaintiff must recover on his own title. The Court did decide that the defendant had title under the act of 15th May, 1856.

II.

This interpretation of the act of 1856 was so understood by the Executive of the United States and the State of Iowa: See letter of Thompson, Secretary of Interior, to Johnson, Chairman, 11th May, 1860; record, 165; Smith, Sec'y of Int., 10th April, 1862, page 70; Commissioner to Governor of Iowa, 15th April, 1862; Governor of Iowa to Edmonds, 6th May, 1862; Report of the Committee of House, read in Senate, 36, Congressional Globe, 1130; William v. Baker, 59.

It was so understood by Congress, when the resolution of 2d March, 1861, was passed. It was so understood by Congress, when the act of 12th July, 1862, was passed, and by the State of Iowa, in its resolution for the passage of the act, record 168. It was so agreed by the United States and the State by the Harvey settlement of 22d May, 1866; record, page 219 to 223.

And this interpretation of the act of 1856 having been followed by the Executive and Legislative Departments of the United States, is binding on this Court.

In determining the construction to be put on act of Con-

gress, the Court will look at all the acts which relate to the same subject, whether before or after the act to be construed. Potter's Dwarris, page 145.

This Court will pay great deference to the construction of an act, by officers, whose duty it is to execute it. Edwards v. Daily, 12 Wheaton, 206, and many other cases cited, 1 Brightley's Federal Digest, Construction.

In construing a public grant, the attendant and surrounding circumstances under which it was made, are competent evidence for the purpose of placing the Court in the same situation and giving it the same advantages for construing the paper, which were possessed by the actors themselves." Cavazos v. Trevino, 6, Wallace 773.

Independent, however, of all construction of the acts of '56, '61 and '62, we have the absolute agreement of the United States and the State Executive in the Harvey settlement, that the lands in dispute belong to the railroad grant of 1856, and other lands were certified in lieu of them, and that agreement is ratified by the State and Congress; and the plaintiff's title is established, unless there is some intervening right of the Des Moines Navigation Company which makes the agreement invalid.

We will examine these claims in their order.

III.

It is claimed, by the Des Moines Navigation Company, that it is a *bona fide* purchaser from the State of Iowa, by the State resolution of 22d March, 1858, and the deeds by the State in pursuance thereof. Record page 82, and the resolutions of Congress, 2d March, 1861, Record 88.

A *bona fide* purchaser is one who holds the legal title to land, for a consideration, paid before notice of any default of title. Even if a deed was prepared and the money paid

and the purchaser gets notice of the default in the title before delivery, he is not a *bona fide* purchaser.

Bassett vs. Nosworthy, 2 Leading cases in Equity, 1.
Sugden on Vendors, 152, s. 11.
1 Story, Equity Pr., 64, c.

The Supreme Court, in the Litchfield case, 23 Howard, 66, where the claim of *bona fide* purchaser was set up, held that he could not be considered an innocent claimant, because he claimed under a law, the construction and meaning of which every person was bound to know; and probably this is the reason, that in Wolcott's case the court held that the navigation title was confirmed by the act of 12th July, 1862.

We have in this case, not a case of constructive notice, actual proof of notice.

On the 16th of November, 1856, record 168, the President of the Des Moines Navigation Company, addressed a letter to the Governor of Iowa, which was communicated to the Legislature of Iowa, (in journal of the House, page——) a letter which is set out in the record in full, of which the following facts show notice:

"The contract of this company was based upon the as-
"sumption that the grant of Congress for the improvement
"of the river covered the unappropriated odd sections to
"the source of the river, and comprised somewhat over a
"million of acres. The State agreed to sell these lands to
"the company for $1,300,000, to be expended upon the im-
"provement, and in payment of the State debt then out-
"standing. The lands to be conveyed to the company at
"the rate of 20,000 acres, when the disbursements should
"reach $30,000."

"Early in the winter of 1854, rumor became rife that the
"General Government intended to take the position that
"the grant did not extend beyond the Raccoon Fork. Ap-
"plication was at once made to the General Office, for the
"transfer of the remaining lands to the State, and the
"Commissioner of the General Land Office promptly res-

"ponded that he held the grant as not extending above "Fort Des Moines."

In some dark way, this letter is barely mentioned in the statement of facts printed by the defendant.

After the letter in 1856, the Navigation Company abandonded its contracts ; abandoned the work ; record 82, 83, and 84 ; took whatever right the State had to the lands certified by Stuart and McLelland prior to 23d December, 1853, under the grant of August 8th, 1846, and in any other manner whatever. And as there was no other right whatever, the company took the chances of a title under that act, with full knowledge that the Executive of the United States had construed the act against its title ; and upon appeal it was decided against them by the President, and upon a trial decided against them by this court.

If the question as to who are *bona fide* purchasers from the State, under the resolution of March 2d, 1861, is one for this court to determine, it has already determined that the Des Moines Navigation Company could not be in the Litchfield case, and it must now hold that it was not so in fact. The Navigation Company with a full knowledge that the title did not pass under the act of 1846, taken for a debt due from the State of Iowa, a title it knew was not a good title. If the question is one for the State of Iowa to determine, it has determined and agreed, by the Harvey settlement, that it was not.

But the resolution of 2d March, 1861, was not intended to enable the State of Iowa to confer title on the said company, and the *bona fide* purchasers were the persons to whom the State had sold lands between the railway grants; and that such is the fact, is proved by the testimony of the resolution itself.

Looking to the language of the resolution there is an admission the United States has parted with the title to a portion of the land improperly certified by the Secretaries, Stuart and McLelland, the words, "all the title which the

United States *still* retain in the tracts of land, improperly certified and which is now held by *bona fide* purchasers under the State of Iowa, is released to the State," suggest two thoughts, what was retained and who were *bona fide* purchasers? You look at the history of the act: The Litchfield decision, that the lands had been improperly certified, the railroad had claimed title under the act 1856, the Litchfield decision had held that they passed under that act: not necessary to have been decided, but it was so decided and so understood.

The mischief to be remedied was to protect *bona fide* purchasers, not named in the act or determined by Iowa. The construction put upon the act by Secretary of the Interior. In preparing the resolution, his letter to the chairman of the Committee of Public Lands, Record 165, "But now since the Supreme Court has decided that the certification of the lands, above the mouth of the Raccoon Fork, has conferred no title and that the land was no part of the Des Moines grant, the claim of State can no longer be called in in question, and the second title saves the land embraced by it to the grants, although the prior title is regarded as worthless."

The report of the Committee of the House, read in the Senate, before the amendment and passage of the resolution, Record Williams v. Baker, 59, "Within the past year the Supreme Court of the United States,has decided against the construction put upon the act of August 1846, that the titles by which the lands are now held is wholly nugatory, and that they still remain the property of the United States. But on the 15th May, 1856, Congress made another grant of land to the State of Iowa, to aid in the construction of railroads. This grant covers all but about one thousand acres of the same land which had been certified and sold under the act of August, 1846, and is therefore beyond the reach control of the United States."

This Court has decided, in Litchfield's case, that the communications to Congress by the executive officer, and reports of Committees to Congress will be looked into by

them in construing an act of legislation. They constitute the history, the surrounding circumstances under which the resolution was passed, and enable the Court to see and apply the meaning of the act. The title which had been conveyed by the United States was the railroad title. The *bona fide* purchasers of the remaining titles are now fully comprehended, these letters, reports and decisions, constitute the history of the act. They explain the mischief to be remedied, just as well as a preamble, which set them out.

IV.

This meaning is intensified by the act of 12 July, 1862; under which the defendants claim an adjudication in their favor in Wolcott vs. Des Moines Navigation Company. This act was passed in pursuance of a joint resolution of the Legislature of the State of Iowa, (record, p. 168), of 7th April, 1862, instructing their representatives to procure the passage of an act granting or confirming to the State of Iowa, all of said river land, provided that no such act shall in any manner apply to any lands heretofore granted to the State for railroad purposes, or any other purposes.

The act of July 12th, 1862, extends the grant of 1846 to the alternate odd section between the Raccoon Fork and the northern boundary of the State, &c., "and if any of said lands shall have been sold, or otherwise disposed of by the United States, excepting those released by the United States to the grantees of the State of Iowa, under the joint resolution of March 2d, 1861; the Secretary of the Interior is hereby directed to set apart an equal amount of land within said State, to be certified in lieu thereof; provided that, if said State shall have sold and conveyed any portion of the land lying within the limits of this grant, the title of which has proved invalid, any lands which shall be certified to said State in lieu thereof, by virtue of the provisions of this act shall secure to and be held as a trust fund for the benefit of the person or persons respecting whose titles shall have failed as aforesaid."

What lands had been conveyed or otherwise disposed of by the United States since 1846? The lands to the railroad grant of 1856, so said a Committee of Congress; so said the Secretary of the Interior to Congress, and so said the United States Supreme Court in Litchfield's case.

Whose title had been declared invalid? The Des Moines Navigation Company's title, so declared by the Supreme Court; so declared invalid by the resolution of 2d March, 1861, and both of these propositions are just as plain to the mind acquainted with the history and surrounding circumstances of the act, as if such words had been put in the act. There is no grant for *bona fide* purchasers here. Construing these acts in *pari materia* and the railroad title is admitted; the navigation title declared invalid, is to have the indemnity.

V.

It was the right and the duty of the Secretary of the Interior, to determine what lands had been disposed of by Congress, and to certify other lands in lieu thereof.

The Legislature of Iowa, by act, to provide for the adjustment of certain land claims with the General Government, approved March 30th, 1866, and copied on the record, page 200, after reciting that the land falling to the State under the resolution of 3d March, 1861, and act of 12th July, 1862, had not been certified or approved to the State of Iowa, appointed Josiah A. Harvey, Register of the State Land Office, a Commissioner in behalf of the State of Iowa, to adjust with the General Government of the United States, all the matter and claims aforesaid, and by the 3d section of the act, his settlement, when approved by the Census Board, was to be binding on the State of Iowa. A settlement was made by him with the Secretary of the Interior, on the 22d day of May, 1866, approved on the 20th of June, 1866, by the Census Board, certified to Commissioner of the General Land Office, record, page 34, 35, and 36, Brown's deposition 212, Harvey's deposition 245.

By the settlement the State got 44,800 acres under the resolutions of March 2d, 1861, between the railway grants certified in 1863, confirmed under the act of 1856, or lands previously disposed of by Congress, under the act of 12th July, 1862, and received certificates for other lands in lieu thereof and indemnity therefor. The State did not claim that the Navigation Company was a *bona fide* purchaser from it.

This settlement has been ratified by the State, under act of 30th March, 1866, and act of 3d March, 1871, by Congress, and if there was any doubt thrown on the action of the Land Office after acts 1861 and 1862, by the Wolcott decision, it is removed by this settlement and its ratification, not only the State of Iowa, but the Des Moines Co, the State having accepted the settlement and elected to claim under it, and held title to these lands under the act of 15th May, 1856, and received, by the settlement, indemnity for it, is forever estopped by it.

"A party cannot occupy inconsistent positions, and where one elects to claim under a contract, with a knowledge of his rights and the facts, he is bound by it."

Bigelow on estoppel, 578.

He who accepts a benefit under an instrument, must adopt the whole of it, conforming with all its provisions, and renouncing every right inconsistent with them.

Herman on estoppel, 461.

The Des Moines Navigation Company is bound just as completely by the act of the State, as the State itself.

It acquired no title, unless by the act 12th July, 1862, and that act, instead of giving it a title to the lands in dispute, gave them to the railway grant, and the State, which alone was authorized to settle with the Secretary of Interior, confirmed the railway title, took the indemnity for the Navigation Company, and that Company can claim the indemnity, and nothing more.

VI.

We now assail the Wolcott case, not the decision, for that with the light before the court, was right enough perhaps—but the case made by it.

The case and its kinsman, Burr, were brought by parties interested in the same side of the question, to get a decision against a party not in court, and managed by Litchfield, who had brought a suit in Iowa, (Litchfield vs. Polk County, 18 Iowa, 70), which was dismissed, because he did not make the railway interest a party.

The defendant, which could only be lawfully sued in Iowa, as an Iowa corporation voluntarily migrated to New York.

The whole history of the resolution of 2d March, 1861, was kept out of the case. Their documentary proof, ended just before Secretary Thompson's letter to the Chairman of Committee of Public Lands.

The construction put on that resolution by Congress, by the Secretary of Interior and by the State of Iowa, were kept out of the record.

The certificate of these lands to the railroad companies after the resolution of 2d of March, 1861, was suppressed; and although the State of Iowa had then accepted of the indemnity, for their lands, as railroad lands, and taken a certificate, for others, under the act 12th July, 1862, that fact was suppressed.

And all of the act 12th July,'62,which referred to the sale,or disposed of the lands by Congress, and the authority to the Secretary of Interior to certify other lands: and the proviso, that the State should be trustee for the party whose title had been declared invalid, was left out—was not before the court, and not observed by it. See the record in this court, Wolcott vs. Des Moines Navigation and Railroad Companies, page 35, page of this record, 398, and the case was so distorted as to convey the idea to the court that the

State claimed the lands for its *bona fide* purchasers under the resolution of 2d March, 1861. The settlement of the State and of the United States, had not then been perfected, though the State had in 1863 claimed the lands under the railroad grant, and got the certificate of indemnity. See letter of Commissioner to the Sec'y of Interior, 23d Feb., 1863. Record in this case 380, and in Williams vs. Baker, 242, and answer of Secretary 8th April, 1863, that these lands had been certified as railroad lands, referring to the resolution of 2d March, 1861, and act 12th July, 1862. This documentary evidence, which would have informed the court of the action of the Executive on the resolution of 2d March, 1861, and act 12th July, 1862, were, in a mysterious way, kept out of the consideration of the court.

It is said that the Dubuque & Sioux City Railroad Company appeared to that cause in this case, and argued it. But they filed an affidavit that the whole facts were not before the court, and no new pleadings could be made. All that they could do was to argue the case as made, and the court could not go beyond it.

The Dubuque & Sioux City Railroad Company had, at that time, sold the lands in controversy to the plaintiffs, who, after leave granted, refused to argue the cause for the reason that the whole facts were not before the court.

VII.

If the court should hold that the railroad title is not a good one, then their title has failed, and they are entitled to be reimbursed, the taxes paid, and the indemnity lands which the State held in trust and conveyed to the Des Moines Valley Railroad Company. This proposition is as clear as day. We anticipate the answer, that the Des Moines Valley Railroad Company are *bona fide* purchasers. The trust referred to was created by the act of Congress creating the title, and follows the lands wherever they go, and the act of Assembly of Iowa, 22d March, 1858, which conveyed the residue of lands to the Des Moines Valley Railroad Company, record, page 57, section 5 of the act, contained an express reservation and notice of the railroad title.

JAMES GRANT, *for the Appellant.*

IN THE

Supreme Court of the United States.

THE IOWA HOMESTEAD COMPANY, Appellant,

v.

THE DES MOINES NAVIGATION AND RAILROAD COMPANY, Appellees.

Argument of Mr. WITHROW for the Appellees.

Pearson, Printer, corner 9th & D sts., Washington, D. C.

IN THE

Supreme Court of the United States.

THE IOWA HOMESTEAD COMPANY, *Appellant*,

v.

THE DES MOINES NAVIGATION AND RAILROAD COMPANY, *et al.*, *Appellees.*

Argument of Mr. Withrow for the Appellees.

But a few weeks since the case of *Williams* v. *Baker* was submitted to this court upon full printed and oral arguments, involving the main questions in this case. These questions, as we claimed in the arguments submitted on the part of the appellees, have been three times decided by this court. In that cause I felt, in view of the magnitude of the interests involved, and the persistency of counsel in attacking the soundness of those decisions, that it was my duty to present the questions as original propositions. I will not weary the court by a re-discussion. That which was said in that case presents all, as to those questions, which I care to submit in this.

The appellant in his bill alleges:

> The said plaintiffs have been in the possession of the lands claimed by them, themselves or their vendees in contract, since 1861. They have paid taxes thereon to the State of Iowa since, in all amounting to eighty thousand dollars; and if their title has failed they are entitled to have the taxes refunded since 1861 by the holder of the legal title, who has not paid them.

Upon this allegation issue is joined.

The parties stipulated that the only questions submitted on the hearing are—

1. In which of the parties is the paramount title to the lands in controversy?

2. If the title shall be adjudged to be in the defendant, The Des Moines Navigation and Railroad Company, is the plaintiff entitled to be reimbursed the taxes which it has paid on the lands?

The amount of taxes paid is admitted to be $2,000. If the court shall find that the plaintiff is entitled to be so reimbursed, the question of amount to be reimbursed shall be referred to a master, and the defendants shall have a right to show any counter claim or other matter which should be considered as reducing the amount to be reimbursed.—(Record, p. 485.)

The decree below dismisses the bill.

ARGUMENT.

The plaintiff claims that if it is adjudged that the title to the lands in controversy is in the defendants, they shall be required to reimburse plaintiff for all taxes paid by it.

If there is any recovery it must be had upon the principles that govern in actions of *assumpsit* for moneys laid out and expended. This principle has no application to this case. The rule is stated by Chitty:

And it is also necessary, thirdly, that the defendant's express or implied request to the plaintiff, to pay the money for his use, should be shown by the plaintiff. Accordingly it is not sufficient merely to prove that the defendant was liable to a third person, and that the plaintiff discharged such liability, but it must appear that the plaintiff did so at the instance and request, either express or implied, of the defendant, or that the act was subsequently recognized by him.—(Chitty Contr., p. 660, 10th Am. ed.)

And when the payment was made with knowledge on the part of plaintiff that he was not bound to pay, such payment will be held not to have been made with the implied warranty of the defendant.—(Chitty Cont., p. 563.)

As to the general proposition we cite *Boaz* v. *Updegrove*, 5 Barr., 518; *Burt* v. *Thompson and Warren*, 3 Head., 534; *Gregg* v. *Patterson*, 9 Watts & Serg., 197; *Stephens* v. *Broadnax and Newton*, 5 Ala., 158; *Crisman et al.* v. *Loneo*, 1 Ind., 212; *Shirts* v. *Irons*, 28 Ind., 461; *Francisco* v. *Wright*, 2 Gilm., 692.

Denly v. *Moore*, 1 Barn. & Ald., 123, raises the question between the landlord and a sub-tenant. The tenant made payment of taxes for his landlord, with a right under the statute to deduct from the next monthly rents. The taxes were paid, but not deducted. It was held that the payment was voluntary, and could not be recovered back. The point was made in argument that the landlord was under legal obligations to pay the taxes, and assumpsit would lie, but it was overruled by the court. This case was followed in *Spaggy* v. *Hammond*, 2 Brod. & Bing., 59, and in *Cummins* v. *Bredborough*, 15 Mees. & W., 438.

The Supreme Court of New York, in *The Overseers of Wallkill* v. *The Overseers of Mamakating*, 14 John., 86, applies the rule as follows:

> To gain a settlement it was necessary that the party should be charged with and should pay taxes for two years. The pauper was charged with taxes for two years. For one year he made payment; for the next the payment was made by the collector, without his request. Held, that the payment was voluntary and could not be recovered by the collector, and was not a payment by the pauper.

This case followed *Beach* v. *Vandenburgh*, 10 John., 361.

The Mayor and City Council of Baltimore v. *Hughes, Adm'r*, 1 Gill & John., 497, was an action by the city to recover for moneys expended by the plaintiff in making an improvement for which a tax had been imposed upon the property of defendant. In other words, it was an action to recover for moneys laid out and expended in the payment of defendant's special tax. We copy the language of the court as a clear statement of the rule touching such payments:

> The action for money paid, laid out, and expended, must be founded upon a contract, express or implied, and it is a settled rule, that no person can by a voluntary payment of the debt of another, without his authority, make himself the creditor of the person whose debt is thus paid; but if one is compelled to pay the debt of another, as in the case of a surety, and does pay it, the law implies a promise on the part of him for whom the money is *paid* on

which an action may be sustained, for in such case it is not a voluntary, but a compulsory payment.

In this case there was no debt due by the defendant's intestate, and the payment made by the plaintiffs was on account of a contract entered into between the commissioners and the man who did the paving. But if this had been a debt due by the defendant's intestate to the workmen who did the paving, which the plaintiffs were not compelled to pay, a voluntary payment by the plaintiffs, without the authority or request of the defendants intestate, could not raise an assumpsit against him; and there is no evidence of any such authority or request. Or if the defendant's intestate was indebted to plaintiffs on account of the taxes imposed, that liability would not sustain a count for money paid, laid out, and expended, which is the fifth count in the declaration in this case.

The Inhabitants of Middleborough vs. *The Inhabitants of Taunton*, 2 Cush., 406, makes a strong application of the principle. The line between two towns in different counties was situated in the centre of a highway. One of the towns was indicted for not repairing the highway, and submitted to a fine, which was expended in the repairs needed. In an action against the other town to recover one-half of the money so paid the court decided that it "is necessary in an action of this description to aver and prove the defendant's special instance and request." The court continued:

But it is said that towns are by law (Rev. Sts., c. 25, §1) obliged to repair highways; and it is certainly true that all highways "within the bounds of any town" are to be kept in repair at the expense of such town. If towns repair beyond their bounds without an actual request, it is a voluntary act, done in pursuance of no obligation or duty; and money laid out for such a purpose is not expended at the implied request of the town, subject to the duty of such repairs.

In *The Inhabitants of Roxbury* vs. *The Worcester Turnpike Corporation*, 2 Pick., 41, it was held that a town which had kept in repair a part of a turnpike road, which was laid out over an ancient county or town road, could not maintain an action of assumpsit on the ground of an implied promise to recover the expenses incurred.

A constable who suffers execution to sleep on his hands, and then pays the money to the plaintiff, without any previous demand of the defendant, and without his re-

quest, cannot maintain an action against the defendant for the amount paid to the plaintiff on the execution.

Jones vs. *Wilson*, 3 John., p. 433.
Menderback vs. *Hopkins*, 8 John., 436.

The claim is made for the appellants that they made these payments in good faith and in ignorance of the law. Mistake of law is no ground for recovery. Upon this proposition the presentation of authority is unnecessary.

It is difficult, however, to understand the good faith of the plaintiff. This court decided, in 1866, in the Walcott case, that the title upon which it relied was invalid. Every decision of this court and of the state court has advised it of the insufficient character of its title. The lands were never claimed by the railroad companies, as passing under the grant of May 15th, 1856, until the year 1860, and they were not certified to the state as railroad lands until 1863. From the beginning the alleged claim has been stoutly denied by the defendants; and when the lands were certified they were claimed by defendants, and their grantees, under certificates executed by the executive officers of the general government, and patents executed by the state.

THOS. F. WITHROW,
For Appellees.

IN THE

Supreme Court of the United States.

THE IOWA HOMESTEAD COMPANY

v.

THE DES MOINES NAVIGATION AND RAILROAD COMPANY ET AL.

Argument of Thomas F. Withrow for the Appellee, The Des Moines Valley Railroad Company.

Pearson, Printer, corner 9th & D sts., Washington, D. C.

IN THE

Supreme Court of the United States.

THE IOWA HOMESTEAD COMPANY

v.

THE DES MOINES NAVIGATION AND RAILROAD COMPANY, *et al.*

Argument of Thomas F. Withrow for the Appellee, The Des Moines Valley Railroad Company.

The contest between the plaintiff and appellant, and one of the defendants and one of the appellees, the Des Moines Valley Railroad Company, is contingent upon the defeat of the plaintiff's claim to the lands in place. If the plaintiff shall recover the lands within five miles of the Des Moines river, it asserts no claim to those known as the indemnity lands. If it fails in this suit to establish its claim to those in place, it claims the indemnity lands, or a portion of them, under the act of July 12th, 1862. To this branch of the case I now invite the attention of the court.

This claim is made under the act of July 12th, 1862.[1] The language of the act is: "And if any of the said lands shall have been sold or otherwise disposed of by the United States *before the passage of this act*, excepting those released by the United States to the grantees of the State of Iowa, under the joint resolution of March 2, 1862, the Secretary of the Interior is hereby directed to set apart an equal amount within said state to be certified in lieu

1. Record, p. 369. Appellee's statement of the case, p. 66.

thereof: *Provided*, That if the said state shall have sold and conveyed any portion of the lands lying within the limits of this grant, the title of which has proved invalid, any lands which shall be certified to said state in lieu thereof, by virtue of the provisions of this act, shall enure to and be held as a trust fund for the benefit of the person or persons respectively whose titles shall have failed as aforesaid."

It is not disputed that in the Harvey settlement indemnity lands were allowed to the state for the lands which had been certified under the act of 1846, but which were within fifteen miles of the Dubuque and Pacific railroad, the Department of the Interior holding, at the date of the settlement, that the lands passed to the state to aid in the construction of the railroad, under the act of May 15th, 1856. It is admitted that all lands which the state received under the act of July 12th, 1862, were subsequently granted to the defendant, the Des Moines Valley Railroad Company, reserving those only which had been conveyed by the state under the act of August 8th, 1846, and the legislation pursuant thereto.

The first question is, had the state at the date of the passage of the act of July 12th, 1862, conveyed to the plaintiff or its grantors any portion of the lands lying within the limits of this grant? The only grant or conveyance made by the state to the Dubuque and Pacific Railroad Company, the grantor of the plaintiff, is set out in the act of the Iowa legislature of July 14th, 1856.[2] The act refers to the act of Congress of May 15th, 1856, and enacts that so much of "the lands, interests, rights, powers, and privileges as are or may be granted and conferred in pursuance" of said act "to aid in the construction of a railroad from the City of Dubuque to a point on the Missouri River at or near Sioux City, with a branch from the mouth of the Tete des Morts to the nearest point on said road, * * * are hereby disposed

2. Record, p. 91. Appellee's statement of the case. p. 35.

of, granted, and conferred to and upon the Dubuque and Pacific Railroad Company." Only the lands granted by Congress to the state by the act of May 15th, 1856, were by the state granted and conveyed to the grantor of the plaintiff. This brings us back to the question, were the lands which had been certified to the state under the erroneous construction of the act of August 8th, 1846, embraced in the grant of May 15th, 1856? I have discussed this question in the case of *Williams* v. *Baker*, and do not care to add anything to what I said then. If we are correct in the position that the lands in place were within the scope of the proviso in the first section of the act of May 15th, 1856, they were not granted to the state by that act, and were not granted by the state to the company by the act of July 14th, 1856. The plaintiff has never had any title "which has proved invalid," and cannot be a *cestui que trust* as to the indemnity lands. Let it be remembered, in connection herewith, that when the act of July 12th, 1862, became a law, not an acre of these lands had been certified to the state under the act of May 15th, 1856. The first certification was made on the 7th of April, 1863.[3]

At the date of the passage of the act of July 14th plaintiff's chain of title consisted solely in the act of May 15th, 1856, and of July 14th, 1856. If its claim is sound it owns the lands in place, and nobody is entitled to any indemnity. If the lands were granted by the act of May 15th, 1856, to the state, they were as clearly granted by the state by the act of July 14th. The joint resolution of March 2d, 1861, could not divest the title, and its effect would be to deprive the state of indemnity. The logical result of plaintiff's argument is that it has the title to the lands in place, and the state was not entitled to indemnity. When it abandons this position it admits that it never had any title, either valid or invalid. In other words, if it ever had any title that title is a valid one.

3. Record, p. 481. Appellee's statement of the case, p. 75.

But it is urged that the state has received about 300,000 acres of indemnity for the lands which had been erroneously certified under the act of August 8th, 1856, and that the defendant, the Des Moines Valley Railroad Company, claims title to them, although it was not the holder of any titles which had failed within the meaning of the act of July 12th. To this branch of the argument I now desire to call the attention of the court.

The Harvey settlement was made in May, 1856. The Wolcott case was then pending in this court. The Litchfield case had been decided. Mr. Harvey, the commissioner on the part of the state, was a witness in this case and testified.[4]

In view of the law as understood to be settled in the case of the Dubuque and Pacific Railroad Company v. Litchfield, (23 How., 66,) the lands in odd sections within five miles of the Des Moines river, above the point referred to, and which were within the limits of the grant for railroad purposes of 15th May, 1856, were considered as enuring under said grant to the railroad companies, and were therefore excluded from this settlement, as land otherwise appropriated by the government, notwithstanding they had been previously certified to the state under the act of 1846, and disposed of by the state.

In accordance with this theory, about 300,000 acres were certified as indemnity for the lands which it was claimed had been "disposed of by the United States," by the grant for railroad purposes. After this settlement was made, this court declared in the Wolcott, Burr, and Riley cases, the construction under which it was made erroneous. If the title had remained in the condition in which it then was, this court would unquestionably hold, in a proper case, that the certification was erroneous and void to pass a title. The legislature of Iowa, however, on the 31st of March, 1868, passed an act "prescribing the terms and conditions on which the state will relinquish and convey to the Des Moines Valley Railroad Company, certain rights and privileges in respect to the resumption of lands heretofore granted to said company."

After naming the terms and conditions, it provided that

4. Record, p. 246. Appellee's statement of the case, p. 90.

upon receiving satisfactory evidence of a compliance with the same, the governor "should execute and deliver to the Des Moines Valley Railroad Company, or to their assigns, a deed or deeds in the name of the State of Iowa, without warranty, for all the lands embraced in said act of Congress, approved July 12th, 1862," saving and excepting certain reservations. It also ratified and confirmed the Harvey settlement.[5] On the 3d of March, 1871, Congress enacted that the *title* to the lands which had been certified in accordance with that settlement, "be, and the same is hereby, ratified and confirmed to the State of Iowa and its grantees."[6] Until the passage of this act, neither the state nor the company had a valid title. The lands were erroneously certified under the act of July 12th, 1862, upon the assumption that the lands in place had been granted by the act of May 15, 1856. It will be observed that Congress did not ratify and confirm the *settlement.* The *title* was ratified and confirmed, the reference to the settlement being made only for purpose of description.

It has been claimed that this act is a legislative construction inconsistent with the Wolcott case. An examination of the act will show that Congress carefully avoided approving the construction of the act of 1856 involved in the settlement. There is no approval or confirmation of the settlement. There is a grant of the lands certified in *accordance* with the settlement—this and nothing more.

In conclusion, we claim—

1. That the plaintiff is not entitled to share in the indemnity lands.

2. That the title to said lands, under the legislation of Congress and the General Assembly of the state, is in the Des Moines Valley Railroad Company.

THOS. F. WITHROW,

For the Appellee, the Des Moines Valley Railroad Company.

5. Record, p. 156.

6. Record, p. 484. Appellee's statement, p. 102.

Supreme Court of the United States.

December Term, 1872.

The Iowa Homestead Company

vs.

The Des Moines Navigation and Railroad Company, the Des Moines Valley Railroad Company, and others.

Argument in behalf of the Des Moines Navigation and Railroad Company and its Grantees.

BY

EDWIN C. LITCHFIELD.

Supreme Court of the United States.

THE IOWA HOMESTEAD COMPANY,
APPELLANTS,
vs.
THE DES MOINES NAVIGATION & RAILROAD COMPANY, AND OTHERS,
APPELLEES.

Argument for the D. M. N. & R.R. Co., and its grantees.

The principal question involved in this case is the question of title to the Des Moines river lands, in the State of Iowa.

The appellees claim title under the act of Congress of August 8, 1846, making a grant to Iowa for the improvement of the Des Moines river, and the joint resolution of Congress of March 2, 1861, and the act of Congress of July 12, 1862, confirming and extending the grant made by the act of 1846, and under contracts of sale, made by the State of Iowa in 1854, and a direct legislative grant made by the State by joint resolution of the General Assembly of March 22, 1858, and patents issued by the State in May, 1858, which patents were subsequently recognized as valid and effectual conveyances of the lands by the State by an act of the General Assembly of March 3, 1860, and also by another act of the General Assembly of April 2, 1860.

The appellants claim title under the act of Congress of May 15, 1856, granting lands to Iowa to aid in the construction of railroads, and the act of the General Assembly of the State, of July 14, 1856, regranting these lands

to certain railroad companies, one of which was the Dubuque and Pacific Railroad Company, to whose right to the lands in question in this suit the appellants claim to have succeeded.

FIRST POINT.—The appellees took a good title to the lands in question under the acts of Congress making, confirming, and extending the river grant, and under the contracts, grants, and patents of the State above referred to.

[Upon the question of title here involved, the undersigned has submitted an argument in the case of Baker *vs.* Williams, and The Cedar Rapids and Missouri Railroad Company *vs.* Martindale and others, now pending and undecided in this court; and, without repeating it here, he begs respectfully to refer to and adopt that argument as applicable in the consideration of this point.]

And, in addition, he desires to correct some manifest errors in the argument which has been filed by Mr. Grant in behalf of the appellants in this cause.

In that argument it is repeatedly stated that in 23 Howard, 66, this court decided that "the title of the railroad company, under the act of May 15, 1856, was good;" and it is added, "this interpretation of the act of 1856 having been followed by the executive and legislative departments of the United States, is binding on this court."

This is an entire mistake; and we submit:

SECOND POINT.—In the case of Litchfield *vs.* Dubuque Railroad Company, (23 Howard, 66,) this court did *not* decide that the railroad company took a good title under the act of May 15, 1856; and the title of that company was not in issue in that case.

That was an action of right; and the plaintiff could only succeed upon the strength of his own title. He relied upon a title derived under the river grant, and, in the pleadings,

set up his title and his right to the possession of the land; the railroad company denied his right to the possession, but did not set up any title in itself.

That was the issue; and the *sole question* involved and decided was *as to the plaintiff's right*, and this required the construction of the act of August 8, 1846, but did not require any construction of the railroad act of May 15, 1856.

There can be no dispute as to the fact, for this court has itself had occasion to say what was the precise point involved, and decided in the case in 23 Howard.

After that decision the railway company entered a judgment in the court below, that "the said defendant, the said Dubuque and Pacific Railroad Company, *hath right to the lands claimed in the declaration*," &c.

Thereupon, the plaintiff brought a writ of error, and the judgment was reversed in this court at the December term, 1868.

Mr. Justice Swayne delivered the opinion, in which he said: "The plaintiff in error brought an action to recover the land described in the declaration, averring that he claimed and was entitled to possession.

The defendant, the Dubuque Railroad Company, denied the allegation of his right of possession. *It set up no title in itself.*

The case went to trial upon the issue so made. "The opinion then gives the history of the case down to the entry of the above-mentioned judgment, and proceeds as follows: "Litchfield excepts to this judgment, and insists *that the right of the railroad company to the land in controversy was never in issue and never decided.*" * * "*We think these objections well taken;*" and the judgment was accordingly reversed, and the court below was directed to enter judgment, "simply in favor of the defendant *upon the issue joined*," &c. The counsel who argued for the railroad company on that occasion is the counsel for the appellants here,

and must be presumed to know of the decision which then followed his argument—to wit—that "the right of the railroad company to the land in controversy was never in issue, and never decided" in the case in 23 Howard; yet he repeatedly states here that in that case this court "did decide that the railroad company had title under the act of 15th May, 1856." Can he point out in the cases of Burr & Wolcott—which he charges were fictitious cases designed to impose upon the court—anything *so "fictitious"* as his own statement of what this court decided in 23 Howard?

We repeat that in that case the title of the railroad company was not in issue, and was not decided. But in the subsequent cases of Wolcott and of Burr (5 Wallace, 681) the title of the railroad company was directly in issue; and the court, after hearing the counsel of that company in argument—and after having given permission to the appellants in this case to file an argument if they desired to do so—adjudged that the railroad company took no title under the act of 15th May, 1856; and in the later case of Welles *vs.* Riley this court referred to the Wolcott case as involving the railroad claim to title, and to the decision in that case as a decision against that title; and the appellants in the present case make no claim to any title, except such as is derived from that railroad company.

The question of title involved in this suit has, therefore, been determined by this court in three cases against the claim now made by the appellants, and after full opportunity for them to be heard in argument; and between these parties those decisions should be deemed final.

But the appellants seek to avoid the effect of those decisions by claiming that two of them were based upon "fictitious" cases.

Their argument "admits that the decision of this court in 5 Wallace, 681, Wolcott *vs.* Des Moines Company, was,

upon the facts before the court and passed upon by it, correct," but assails that case and the case of Burr as cases "brought by parties interested in the same side of the question to get a decision against a party not in court," and alleges that in those cases sundry material facts were omitted and not brought to the attention of the court.

But we submit:

THIRD POINT.—Neither the case of Burr nor the case of Wolcott (5 Wallace, 681) was a fictitious case, designed to impose upon the court.

[In the arugment filed by the undersigned in the case of Baker *vs.* Williams, and of Cedar Rapids Railroad Company *vs.* Martindale and others, he has replied to the charge that the case of Wolcott was a fictitious case, and has shown that no material fact was omitted in that case, and he begs here again to refer to that argument upon this point.

This court made its examination and decision in the case of Wolcott, and not in the case of Burr, but decided the latter case in accordance with the principles which it had settled by the decision in the former. It was, therefore, deemed sufficient to answer the allegation that the Wolcott case was "fictitious," without further reference to the case of Burr.

But, as both cases are again assailed, it may be proper, in addition to what was then said, to refer again to the charge that these cases were fictitious.]

From the very nature of this controversy it was impossible for parties to make up a fictitious case which could impose upon the court. All the facts in the case were admitted; nothing had ever been in dispute except the proper construction of the laws; the requisite testimony on both sides consisted of public statutes and public records, and no matter how much immaterial testimony was introduced, *the*

decision must necessarily turn upon the proper construction of the law. Everything else was immaterial. No matter what may have been done, or left undone, by any of the executive officers, this court had said in 23 Howard, 66, that "the claims of the parties *must be determined by the construction to be given to those acts of Congress.*" In that case all the facts upon which our title depends were before this court, except the subsequent confirmatory acts of Congress. The court had examined those facts, and had decided as to their legal effect, and in the Wolcott and Burr cases, it was only necessary to add to those facts the legislation by Congress confirming our title and extending the grant.

We repeat that it was not *possible* for parties to mislead the court, even if they had had any object in trying to do so, and the assurance to attempt it: and this court could not fail to see, that in the cases of Wolcott and Burr every material fact was disclosed by the records.

The controversy as to the proper construction of the act of the 8th August, 1846, had been pending in the Executive Departments since 1849, and everybody knew that the controversy was as to the construction of the statute *upon an admitted state of facts.*

Yet, when this question *first* came before the court, (in 23 Howard,) upon an agreed case, to which the Dubuque and Pacific Railroad Company was a party, the Attorney-General, who intervened on behalf of the United States, and filed a printed argument, moved to dismiss the case, upon the ground that it was a fictitious suit, and he presented the same line of argument to show that the suit was fictitious as has been offered in this case, and in the case of Baker *vs.* Williams.

But the court refused to dismiss the case, and said that "though the case was an agreed case, made up in a friendly spirit, nevertheless *the object was to try the title,*" and

therefore they felt "bound to hear and decide the cause on its merits."

The question of title to these lands came before this court for the *second* time at December term, 1863, in a case of Burr *vs.* Des Moines Company. In that case the Dubuque and Sioux City Railroad Company, grantors of the appellants, intervened and filed a printed argument, in which they insisted that that was a fictitious suit; but, in reply, Messrs. Mason and Tracy, who were counsel for the defendant, filed an affidavit of Mr. Burr, (annexed to their printed argument,) showing that the suit was "brought and prosecuted in good faith, and for the sole purpose of obtaining a final decision as to the validity of his title to said lands, so acquired from the defendants, without collusion with the defendants or their officers or counsel, and with the *bona fide* intention, in case that this court shall decide that the defendants had no title thereto, to prosecute his claim against them on their warranty," &c.

The court in that case dismissed the writ of error for defects of form, adding, "thus leaving the parties at liberty, if they can do so by a proper agreement in the court below, to remove the difficulties which now prevent this court from reviewing the case."

In accordance with this suggestion of the court, another suit was brought between the same parties, being like the former one an agreed statement of facts, but which was free from the formal defects which existed in the first. And it was this second suit which was decided by the court at the time the Wolcott case was decided.

This second suit of Burr involved the title to the same tract of land (with other lands) which was in question in the first suit, and as to which his affidavit above referred to was submitted to this court. In addition to which the record in the case under consideration contains Burr's testimony, offered by the appellants, that "*both suits were to try the title to the property.*"

The question as to this title came before this court for the *third* time at December term, 1865, when the above-mentioned second suit of Burr, and the case of Wolcott, were submitted by the parties to the record upon printed arguments. Thereupon, in February, 1866, the Dubuque and Sioux City Railroad Company —the grantors of the appellants in this case—applied for and obtained permission to file printed arguments. In both cases they filed an affidavit setting forth that the title to 77,000 acres of land claimed by them was involved in the decision, and that they believed the litigation was not *bona fide*. At the close of the term of the court the cases were, by order, continued until the next term, with leave to any of the parties to file additional arguments. In December, 1866, the appellants in this case applied for and obtained leave to file an argument, alleging in their application that they claimed to own over 50,000 acres of land, the title to which was involved in the decisions to be made in those cases. This court received arguments from all parties who desired to be heard, the appellants in this case and their grantors having full opportunity to present their views, and *neither of them then alleging that any material fact was omitted from the records.* Three eminent counsel, representing the Dubuque Railroad Company and another railroad company then supposed to be interested, filed arguments in behalf of the railroad title, in addition to the arguments filed by the counsel of Burr & Wolcott, while the title of the Navigation Company, claiming under the river grant, was sustained only by the undersigned. This court took ample time for consideration, announcing its decisions in May, 1867—more than sixteen months after the cases had been submitted by the parties to the record upon printed arguments.

It will thus be seen that upon each of the first three occasions, when the question regarding this title came before

this court, the appellants, or their grantors, were parties on the record, or parties intervening, and on each occasion were heard in argument, and upon each occasion the charge was made that the suit was fictitious, and upon each occasion this court disregarded the allegation, and disposed of the cause upon its merits.

The question as to this title came before this court for the *fourth* time in the case of Welles *vs.* Riley, which was strenuously litigated, and was decided at December term, 1869. In that case, also, counsel assailed the Wolcott case, as they do here, repeating the stereotyped charge that it was a fictitious case; but the court said that they could not distinguish that case, "either in the facts or in the argument," from that of Wolcott, and decided it accordingly—sustaining the title of Welles.

If cases like those of Burr & Wolcott, so carefully presenting all the material facts, so elaborately argued in behalf of all parties who claimed to have an interest, including the special counsel of the railroad company, the grantor of the appellants, they themselves, by their counsel, being also in court, and so fully considered by this court before rendering its decision, can now be treated as fictitious, it would seem that every case in which the parties have agreed upon a statement of facts must necessarily be open to the same objection. Such a result would overthrow the well-settled practice of this court, and would nullify the provisions of the statutes of many States—including the States of Iowa and New York—which require all courts to hear and decide causes submitted by parties upon an agreed statement of facts.

The appellants claim title under the Iowa act of July 14, 1856, regranting to the railroad companies the lands which the United States had, by the act of Congress of May 15, 1856, granted to Iowa for railroad purposes.

But the appellees submit:

FOURTH POINT.—The railroad company, grantor of the appellants, never acquired any title to the lands in controversy by virtue of the act of Congress of May 15, 1856, and of the State legislation.

I. The grant made by the act of Congress of May 15, 1856, must necessarily be deemed to be *limited* to *public* lands then belonging, and then *understood* to belong, to the United States.

This court will not impute to Congress the absurdity of attempting to grant, by a public law, any lands except those which were then understood to belong to the United States.

But at that date these lands were not regarded by the Executive Departments as public lands belonging to the United States, for they stood entered upon the books and maps of the General Land Office and of the local land offices as "granted to the State of Iowa for the Des Moines River Improvement by act of 8th August, 1846." And the certificates, which were intended and supposed to convey the title, had been issued to the State; and the rule of law is that enactments of this kind recognize the existing administrative construction of previous statutes upon the same subject-matter.

7 vol. Opinions, 660.

II. The act of 15th May, 1856, by its terms excluded from its operation all lands which prior to that date had been "sold or otherwise appropriated" by the United States; and the lands in question had been "otherwise appropriated," by setting them apart for the river grant made by act of 8th August, 1846, and by certifying them to the State under that act.

This court has put this construction upon that act in 9

Wallace, 89, R.R. Co. *vs.* Fremont county, where it was held that, by the enacting clause of the act of 15th May, 1856, a *reservation* was made of all lands which had been previously *otherwise appropriated.*

(13 Peters, 498, Wilcox *vs.* Jackson.) In this case an "appropriation" of land is defined to be "nothing more nor less than setting it apart for some particular use."

And in the same case this court held: "Land thus appropriated becomes *severed from the mass of public lands*, and no subsequent law, proclamation, or sale *would be construed to embrace it, or operate upon it, although no reservation was made of it.*"

Patents are held to *appropriate* the land which they cover, even if the patents have been illegally and improperly issued. (7 Wheaton, 212, Hoofnagel *vs.* Anderson.)

By act of Congress of 3d August, 1854, the certified lists issued to the State, under the act of 8th August, 1846, had the force of patents, and they necessarily "appropriated" the lands embraced in them. So that, according to the decision in 13 Peters, 498, above cited, the grant by act of 15th May, 1856, "would not be construed to embrace them or to operate upon them, *although no reservation was made of them.* But,

III. These lands were expressly *reserved* in 1849, and continued *reserved* until after 15th May, 1856, for the purpose of satisfying the River grant, and therefore, by the express terms of the act, they were excepted from its operation.

This point has been three times determined by this court in the cases of Burr and Wolcott, 5 Wallace, 681, and case of Welles *vs.* Riley, p. 99, abstract of facts.

In the case of Wolcott, (5 Wallace, 681,) this court not only *decided* that these lands had been *reserved* by competent authority, so as to except them from the operation of

the act of 15th May, 1856, but also set out at length the acts of the executive officers which constituted the reservation. It is not therefore necessary to repeat them here, but we beg to refer to pages 45–49 of our argument in the case of Baker *vs.* Williams for a detailed statement of some of the reasons which influenced Congress to insert in the act of May 15, 1856, the *proviso* which excepted from its operation the lands which had been previously reserved. And we call special attention to a paper to be found at page 336 of the record, *which is now for the first time brought to the attention of this court*—as it was not in the record in the Wolcott case, or in any of the other cases involving this title which have been before the court—and which shows that the express purpose of Congress in inserting the proviso in the act of 1856 was to except from its operation the lands which had been previously set apart for the Des Moines river improvement.

Mr. Bennett was chairman of the Committee on Public Lands, which reported the railroad bill of 15th May, 1856; and he applied to the Land Office for an estimate of the quantity of lands which would pass to the State under the proposed grant. The basis of the answer furnished to him appears from the following certificate, dated within two weeks after the passage of the act.

GENERAL LAND OFFICE, *May* 28, 1856.

This is to certify that in the report from this office to the Committee on Public Lands of the House, on which was based the bill No. 17, approved May 15, 1856, granting lands to Iowa for certain railroads, the estimate of the land which would be conveyed by the said bill was founded on the construction of the Des Moines river grant, to the effect that that grant extended to the source of the Des Moines river, and the alternate sections in a strip five miles in width on each side of the Des Moines river, above as well as below the Raccoon Fork, *were reported as excluded from*

the amount of land that would pass by that bill *and reserved from its operation.*

A. R. PARKER,
Draughtsman House Representatives.

The above statement of Mr. Parker is correct.

H. BENNETT,
Chairman House Committee on Public Lands.

Thus we see that all these Des Moines river lands "above as well as below the Raccoon Fork *were reported as excluded from* the amount of land that would pass by the railroad bill and *reserved from its operation.*"

Upon this understanding and with this intention Congress passed the railroad act of May 15, 1856; and the interpretation placed upon the *proviso* to the act by this court six years ago in the case of Wolcott is thus shown by an official paper, now for the first time published, to have been carrying into effect *the actual and express intention* of Congress in passing the law.

IV. By the act of May 15, 1856, the United States reserved the right *to continue* to dispose of any of the lands granted thereby (notwithstanding that act) up to the time when the specified roads should be *actually built* in sections of 20 miles each; and no title vested in the State or in the railroad company, except as the roads were actually built, and then only to the lands which were *then* public and unappropriated lands lying on each side of *the completed* roads within the specified limits. If after the passage of the act, and before such completion of the road in 20-mile sections, any of the granted lands had been disposed of or otherwise appropriated by the United States, the act made provision for indemnity—by permitting selections to be made from other lands of the United States, which selections could "in no case be more than 15 miles" from such completed roads;

and the rights of the State and of the railroad company were limited to the indemnity which the act provided.

Such is the construction of this act.

(1.) By Attorney-General Cushing, vol. 8, Opinions 244; and again at page 390; and

(2.) By this court, 9 Wallace, 89, R.R. Co. *vs.* Fremont county; 9 Wallace, 95, R.R. Co. *vs.* Smith.

See argument in Williams *vs.* Baker, pp. 25–31.

V. The appellants' bill of complaint admits that up to 2d June, 1864, the railroad company, under which they claim, had only completed their road to a point 120 miles west of Dubuque, which point *was* 80 *to* 100 *miles distant from the lands in question.*

Record, p. 14, folio 39.

They claim that thereby they became entitled to a specified quantity of lands, and as the requisite quantity of public lands was not found remaining on and opposite the sides of the completed road, that, therefore, the railroad grant *run* 80 *to* 100 *miles in advance of the completed road* until it reached our lands, and that it then appropriated them.

We, on the contrary, contend that the grant by the act of 15th May, 1856, was a *float*, which did not attach to any particular public lands until the road was *actually built to and through* them; and that under that act neither the State nor the railroad company could have possibly acquired title to the lands in question on 2d June, 1864, *even if they had been public lands*, because at that date the completed portion of the road was 80 to 100 miles distant, and consequently, under the reservations in the enacting clause of the act, Congress retained full power to dispose of and appropriate these lands, as might be deemed proper; and thus the confirmatory resolution of 2d March, 1861, and the act of 12th July, 1862, took effect, and transferred a good title to

these lands, and were not in any manner in conflict with the provisions of the act of 15th May, 1856.

And such was the opinion of this court, as declared in 9 Wallace, 89, R.R. Company *vs.* Fremont County.

In that case the question was whether a confirmatory act, passed March 3, 1857, could give title to lands lying within six miles of the contemplated line of one of the railroads provided for by the act of May 15, 1856.

The railroad company claimed that Congress having granted the land to the State for railroad purposes on 15th May, 1856, could not afterwards make any other disposition of it. But this court held that "*until the line of the railroad was definitely fixed upon the ground*, there could be no certainty as to the particular sections of lands falling within the grant; *nor could the title to any particular section* on the line of the road vest in the company. The grant was in the nature of a *float* until this line was *permanently fixed*." The opinion proceeded to show that the line of the railroad was not thus definitely fixed at the date of the passage of the confirmatory act of March 3, 1857, and adds: "As the railroad company at this time, for the reasons above stated, had not perfected their grant *so as to have become invested with the title* to any of the sections" in question, "they can set up no appropriation of any of the lands under their grant, *which leaves them subject to the confirming act of* 1857."

Here, then, is a construction by this court of the act of 15th of May, 1856, holding that it leaves the granted lands subject to disposition by Congress up to the time when the railroad companies shall have "*definitely fixed* the lines of their roads *upon the ground*;" or, as again expressed, "until this line is *permanently fixed*;" in other words, until the roads are *actually built* to and through the granted lands—thus for the first time indicating with certainty the particular sections which are designated by odd numbers

and comprised within "*six sections in width on each side of said roads:*" for such, and such only, are the lands granted by Congress; and then, and then only, do the railroad companies "perfect their grant so as to become invested with the title" to the granted lands.

The appellants claim that the railroad company had completed one hundred miles of road on the 21st of April, 1861, and that thereby they "became entitled to" and "acquired title" to the lands in controversy in this suit.

Record, p. 14, folio 39.

We reply—

(1.) At that date, their completed road *was one hundred miles distant from these lands;* and,

(2.) On the preceding 2d of March, 1861, Congress had, by the joint resolution of that date, relinquished "all the title of the United States," and had thus confirmed our title.

(3.) At that date, the line of the railroad through these lands had not been "*definitely fixed*," for, as late as 2d of June, 1864, Congress, by amendment of the act of 15th of May, 1856, authorized the railroad company to "so far *change their line* between Fort Dodge and Sioux City as to secure the the best route between those points," and required the company to file a map "showing the change of line" within one year thereafter. And by a later act of Congress, passed 2d March, 1868, further directions were given as to the line of this road, requiring it to be built "on the most practical route, by way of Webster City and Fort Dodge, to Sioux City," and "to be at all points within the limits" of the original grant made by act of 15th May, 1856, and requiring it to be completed to Fort Dodge by 1st July, 1869.

It is evident, therefore, that this part of the line of road was not "definitely fixed," *even upon paper*, until after the 2d March, 1868, and there is nothing in the record to show when it was *actually built*, except that it was after that

date; and it was this part of the line which passed through the lands in question, *our title to which had been confirmed by Congress seven years previously*, by the joint resolution of 2d March, 1861.

VI. The act of Congress of 8th of August, 1846, the joint resolution of 2d of March, 1861, and act of 12th of July, 1862, by their own force, transferred the title from the United States, and *vested it at once in the State and its grantees under the river grant.*

This being so, the action of Congress was final and conclusive upon all parties and upon all courts, and it totally extinguished any claim which the State or the railroad company could make to these lands under the railroad grant.

If it were even conceded, (which it is not,) that under the act of 15th of May, 1856, the railroad company acquired some inchoate right to these lands, which might afterwards ripen into a title, still, when Congress *confirmed* the title to the grantees of the State under the river claim, this confirmation by Congress cut off and forever extinguished any inchoate right which may have existed under the railroad grant, as it would have cut off, under the same circumstances, any inchoate right of pre-emptors or homestead settlers.

In all cases of conflicting claims to lands where the title still remains in the Government, any action by Congress confirming the title to one of the claimants is a final bar to the claims of the other parties, and absolutely vests the title to the lands in the confirmee; and if, in any case, any possible wrong has been done to any party, his remedy is by an appeal to Congress for such indemnity as he may be entitled to, and not to the courts, to attempt to set aside the confirmation of title which Congress has made.

This is not like a case where the Land Department may have issued a patent to a party not entitled to it—for in such a case the court holds that the party thus improperly

obtaining the legal title merely holds it in trust for the true owner; and as the Land Office has *acted against law* in issuing the patent, the court applies the remedy by requiring the patentee to convey to the real owner.

But in this case the law-making power, by the joint resolution of 1861 and by the act of Congress of 1862, each of which was in its express terms a *conveyance*, has actually transferred the title from the United States and has vested it in the grantees of the State under the River grant, and this absolute transfer of the title *by positive enactment of law* is the *act of the Government itself*, and is of far higher import than a patent, and cannot be questioned or impeached by any party or in any court; whereas a patent is merely the act of an officer of the Government, and can always be avoided when it is not authorized by law.

The appellants also insist that they have been in possession of the lands, and have paid taxes on them to the State of Iowa, and that if their title has failed, they are entitled to have the taxes refunded to them by the holder of the legal title.

Record, p. 19, folio 47.

We reply:

Fifth Point.—If the appellants have been in possession of said lands, their possession has been wrongful and unauthorized by the true owners, and they should be required to account for the use and rents and profits thereof to the proper owners respectively during the time they have been in such possession, as claimed in the defendants' answer.

Record, p. 288, folio 620.

Sixth Point.—If the appellants have paid any taxes upon the lands in question, they have paid them voluntarily, and without any request from the true owners, and with a knowledge of all the facts, and they are not entitled to have the same or any part thereof refunded.

That a payment made voluntarily by one person for another, without any request from the latter, and with a full knowledge of all the facts, cannot be recovered back by action, is an elementary proposition which does not require support from adjudged cases.

But, for illustration, we refer to some authorities to show how this doctrine has been applied, and the language of the courts in relation to it.

The courts say: "A person cannot make another his debtor by paying the debt of the latter without his request or assent."

37 Maine, 403, Willis *vs.* Hobson; 9 Metcalf, 346, Winsor *vs.* Savage.

This is equally true though the payment be made through "mistake as to the law," or made "in ignorance of the law, or the legal circumstances of the case."

47 Penn. State Rep., 496, Nachter *vs.* Nachter; 4 U. S. Digest, (1 of Supplement,) 192, and cases there cited; 34 Alabama, 400.

A voluntary payment by a party, although "made under a mistake or misapprehension as to his legal liability," does not constitute a debt against the party for whom the money was paid.

3 Allen, (Mass.,) 524, Bancroft *vs.* Abbott.

A voluntary payment to a collector of duties, though "made under a mutual mistake of law," cannot be recovered back. The court said: "The construction of the law is open to both parties, and each presumed to know it."

10 Peters, 153, Elliott *vs.* Swartwout.

Voluntary payment of "an illegal tax" cannot be recovered back.

30 Conn., 894, Goddard *vs.* Seymour.

If a collector pays a person's taxes he cannot recover back the money from the person for whom he paid.

10 Johns., 361, Beach *vs.* Vandenburgh.

Nor can a constable who pays an execution against another collect it from the debtor.

14 Johns., 87, and 3 Johns., 434.

If one pays taxes upon property which he does not own he cannot recover it back.

6 Pick., 98 Osborne *vs.* Danvers.

If a party pay a judgment against another party without his request, he cannot recover the money from the party for whom he paid it.

2 Stewart Alabama Rep., 500, Weakley *vs.* Brohan and Alwood.

In 1 Gill & Johnson, 433, Turner *vs.* Edgerton, the court assign reasons as follows: "A stranger cannot, at his pleasure, make me his debtor, whether I will or not, by paying a debt due from me to another. If he could, it would put every man who owed a debt at the mercy of an enemy who might choose to make himself his creditor, without his consent or authority, for the purpose of harassing and distressing him, and deprive him of defences which he might have had to a suit by the original creditor, but of which he would not be able to avail himself against such newly-created liability."

There are cases where payments have been made upon constraint, or through fraud, or upon legal process, whereby a party was *compelled* to pay in order to protect his own property or person, and in such cases the payments are not deemed voluntary; and in such cases the parties making the payments may sometimes recover back the money *from*

the party to whom the money has been paid. But such is not this case.

Here the appellants show nothing to take the case out of the well-established general rule as to voluntary payments.

They do not pretend to have acted under any mistake as to the facts; and they are presumed to understand the construction of public statutes; and they were parties intervening in the cases of Burr and Wolcott, in which this court decided that the railroad company had no title to the lands in question. They had, therefore, full knowledge of the law, as well as of the facts of the case; and if, under these circumstances, they have volunteered to pay any taxes upon property belonging to other owners, whose title they have been laboring for years to defeat, they can make no claim upon such owner, either at law or in equity, to refund the money, and the total thus paid is certainly but a small fraction of the loss and damage which they have caused to such owners by this persistent and utterly unwarranted attempt to disparage their title.

SEVENTH POINT.—The adjustment made between the State and the General Land Office in 1866 was not intended, and did not purport to impair our title, which had been made complete by the Joint Resolution of 1861 and the act of Congress of 1862. On the contrary, that adjustment *admitted* the title of the State to all the lands which had ever been certified under the river grant, including those now in question; and if that adjustment had been intended by either or by both parties to it to impair our title, it could not have that effect.

[Upon this point we refer again to what was said in our argument in the case of Baker *vs.* Williams.]

There are other questions involved in this case between the appellants and the Des Moines Valley Railroad Com-

pany, one of the defendants, in which we are not interested, and to which we have not referred.

The judgment of the court below, dismissing the bill of complaint as to the Des Moines Navigation Company and its grantees, should be affirmed.

EDWIN C. LITCHFIELD,

Of Counsel for D. M. N. & R.R. Co., and its grantees.

IN THE

Supreme Court of the United States.

THE IOWA HOMESTEAD COMPANY, Appellants,

vs.

THE DES MOINES NAVIGATION AND RAIL-ROAD COMPANY ET AL., Appellees.

Argument for Roswell S. Burrows, Appellee.

Pearson, Printer, corner 9th & D sts., Washington, D. C.

IN THE

Supreme Court of the United States.

THE IOWA HOMESTEAD COMPANY, *Appellants*, vs. THE DES MOINES NAVIGATION AND RAILROAD COMPANY *et al.*, *Appellees.*	Appeal from the Circuit Court for the District of Iowa.

Argument for Roswell S. Burrows, Appellee.

In this case we submit the following reply, in behalf of Burrows, to the argument of Mr. Grant: The defendant, Burrows, is interested only in two of the questions made in this case, to wit: The claim of title by appellant to the lands certified to the State of Iowa under the act of August 8, 1846, above the Raccoon fork of the Des Moines river, and confirmed to the state by the joint resolution of March 2d, 1861, and the claim of appellant to be reimbursed for taxes voluntarily paid upon lands to which they had no title.

The first point we make is that appellant must first establish his own title, for, without a title complainant cannot maintain his bill. This title must enure to appellant, if at all, by virtue of the act of Congress of May 15th, 1856.

This court has already determined that under the proviso reserving from the operation of that act all lands set apart for works of internal improvement that the lands in controversy did not pass to the state.

Mr. Grant says that "if it did not pass that it was so construed by the state and the United States to pass under it, and that such construction has been ratified by the United States and the State of Iowa." It is a sufficient answer to this to say that no construction of the State of Iowa, or of the executive officers of the United States can supply the place of an act of Congress, and no ratification can be of any force or virtue unless it is a ratification by that department of the government originally competent to make the grant, to wit, the law-making power of the United States.

The acts of ratification relied on occurred subsequent to the approval of the joint resolution of March 2, 1861, after the right of the defendant became absolute.

Was the Des Moines Navigation Company a purchaser of the land in controversy bona fide within the meaning of the joint resolution of 1861?

1st. Their purchase was made June 4, 1854, at a time that the executive department of the government of the United States, and the State of Iowa, construed the act of 1846 to pass the title to the state for the improvement of the Des Moines river.

The contract was not *only* a contract for the lands for the gross consideration of $1,300,000, but it was a contract for the lands by the acre, to be earned by work on the improvement at $1.25 per acre, the work to be estimated by a state engineer.

All the lands deeded to the company in 1858 had been earned under the contract and paid for by the company prior to May 14th, 1856.

See record, page 372.

The argument of the appellant on the subject of bona fide purchasers proves too much. Mr. Grant defines a bona fide purchaser as meaning nobody at all under this grant. He says no one can be a bona fide purchaser who claims under a law that gives no title, because he is bound

to know the meaning and construction of the law under which he claims. If this is true then we are forced to conclude that Congress meant nothing, and meant to grant nothing, and to release nothing by the joint resolution of 1861, for, by the terms of the resolution, Congress understood the title had failed by the construction given to the act of 1846 by this court. Mr. Grant, however, says Congress did mean the *individuals* to whom the state had sold land for $1.25 per acre, but not an incorporated company. This is a legal, moral, and astute distinction worthy of the corporation that brings this suit.

Can Mr. Grant explain what is the difference between a sale of land to an individual and a sale of land to an incorporated company.

Both paid the same price—$1.25 per acre—for their land—one in work on the improvement at fixed rates for material and labor, estimated by a state engineer; the other in cash.

Again: Mr. Grant says that in 1856 Mr. Johnson, president of the company, wrote a letter to the governor of Iowa, (page 168 of record,) in which he admitted that the title was in doubt. But reading this whole letter, we ascertain that all the land the company got in the settlement of 1858 was earned and paid for before the date of that letter.

See also record, page 372.

Again: We are told, over and over again, that the state only released and quit-claimed these lands to the company. This is such a gross perversion and misunderstanding of the facts contained in the record, that we must express surprise at its statement.

The deed made is in form a conveyance in fee simple under the laws of Iowa, made so by express statute.

The joint resolution of the general assembly of the state, authorizing and directing these conveyances, provides and directs that the state, by its proper officer, shall

certify and convey to the said company all of the lands, &c., and speaks of the lands thus to be conveyed as lands "hereby by the state secured to said company."

See record, page 82.

The governor of Iowa certified all the lands in controversy as lands sold and conveyed by the state, bona fide, and as coming within the provisions of this law.

See record, page 372.

This certificate was recognized by Secretary Browning, Dec. 31, 1868, as establishing the title of the company to this land as a bona fide purchaser under the joint resolution of 1861.

See record, page 457.

The idea of Mr. Grant, that the State of Iowa and the officers of the general government had construed this act as not to embrace these lands, is thus found an *absolute* mistake.

The other point made relates to taxes voluntarily paid by complainant.

If there is any implied promise to repay these taxes the complainant's remedy is at law. A court of equity will sometimes retain a bill and do complete justice when it has once acquired jurisdiction, but such cases are limited to those wherein the court cannot give the remedy sought though the right is established. In this case there is no equity in the bill. Complainant fails, not because the court cannot give him the specific relief asked, but because he is not entitled to the relief asked. He sued for land but says if he cannot get that he has another little claim—a small note for instance—and he asks a judgment on that.

But he has no right, either at law or equity, to recover these voluntary payments. He had his own motives for trying to bolster up his title by showing his own confidence in it; by that means he has obtained money for

lands to which he had no title, and must only repay it at six per cent interest.

It was the company's own speculation; they may have staked too much on the scheme; its failure is their own folly.

See cases of—

Byington vs. Allen, 11 Iowa, 3.
Same vs. Walsh, 11 Iowa, 27.
Same vs. Bradly, 11 Iowa, 78.
Webb vs. Cole, 20 N. H., 490.
Woodford vs. Leavenworth, 14 Ind., 311.

The case is submitted.

C. C. NOURSE,
Solicitor for Burrows.